

March 2, 2017

**FCC FACT SHEET\***  
**Promoting Technological Solutions to Combat  
Contraband Wireless Device Use in Correctional Facilities**

Report and Order and Further Notice of Proposed Rulemaking – GN Docket 13-111

**Background:** In recent years, the use of contraband wireless devices by inmates in correctional facilities across the county has grown rapidly, with inmates using these devices to commit additional criminal acts from behind bars, such as ordering hits, running drug operations, and operating phone scams. Inmates' use of contraband wireless devices is a serious threat to the safety and welfare of correctional facility employees, other inmates, and innocent members of the public.

Some correctional facilities have implemented radio-based technologies to detect and block the use of contraband wireless devices located inside their facilities. These technologies, called Contraband Interdiction Systems (CISs), require FCC authorization. While there is no single solution for every situation, this Report and Order and Further Notice of Proposed Rulemaking would introduce a range of potential solutions to address the needs of correctional facilities nationwide.

**What the Rules Would Do:** The Commission would simplify the process for CIS operators to obtain FCC authorization and make it quicker and easier to deploy CISs at correctional facilities in the following ways:

- **FCC authorization process.** The Commission would streamline the FCC process so CIS operators can get authorized faster and with fewer filings.
- **Carrier cooperation.** In order to be effective, a CIS operator must have arrangements with every wireless carrier providing service in the area covering the correctional facility. The rule changes would require wireless carriers to cooperate and coordinate with correctional facilities and CIS operators in a reasonable timeframe.
- **FCC Ombudsperson.** To make it easier for individuals to navigate the FCC process, the Commission would designate an Ombudsperson to serve as a single point of contact for CIS operators and wireless carriers on all CIS-related issues.

**What the Notice Would Do:** The Commission would also propose various rule changes, seeking to provide additional tools for combating contraband wireless devices in correctional facilities. The item would seek comment on:

- Requiring wireless carriers to disable devices that have been found to be operating inside a correctional facility and how that process should work.
- Whether wireless carriers should identify and disable contraband phones on their own.
- Whether other technological solutions for stopping the use of contraband wireless devices (including wireless signal quiet zones and beacon-based technologies) are viable from a technical, legal, policy, and cost/benefit perspective.

\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or staff, including by email, must be filed in WT Docket No. 13-111, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>).

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

In the Matter of
Promoting Technological Solutions to Combat
Contraband Wireless Device Use in Correctional
Facilities
GN Docket No. 13-111

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING\*

Adopted: []

Released: []

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission:

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\* This document has been circulated for tentative consideration by the Commission at its March open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration by the Commission, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

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**I. INTRODUCTION**

1. Today, we take important steps to help law enforcement combat the serious threats posed by the illegal use of contraband wireless devices by inmates. Across the country, inmates have used contraband devices to order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity that endangers prison employees, other inmates, and innocent members of the public.<sup>1</sup> So in today’s Report and Order (Order), we take immediate action to streamline the process of deploying contraband wireless device interdiction systems<sup>2</sup> in correctional facilities. This action will reduce the cost of deploying solutions and ensure that they can be deployed more quickly and efficiently. In particular, we are eliminating certain filing requirements and providing for immediate approval of the lease applications needed to operate these systems.

2. But our efforts to help law enforcement combat contraband wireless devices does not end with today’s action. In the Further Notice of Proposed Rulemaking (Further Notice), we seek additional comment on a broad range of steps the Commission can take to help eliminate this threat to public safety. In particular, the Further Notice seeks comment on imposing a requirement that wireless providers disable contraband wireless devices once they have been identified. We also seek comment on additional methods and technologies that might prove successful in combating contraband device use in correctional facilities, and on various other proposals related to the authorization process for contraband interdiction systems and the deployment of these systems.

**II. BACKGROUND**

3. *Contraband Wireless Devices in Correctional Facilities.* The use of contraband wireless devices in correctional facilities to engage in criminal activity poses a significant and growing security challenge to correctional facility administrators, law enforcement authorities, and the general public.<sup>3</sup> A 2011 U.S. Government Accountability Office (GAO) report found that contraband cell phones have been

<sup>1</sup> See, e.g., Letter from Mary J. Sisak, Counsel to National Sheriffs’ Association, to Marlene H. Dortch, Secretary, FCC (Dec. 2, 2015); Letter from Governor Nikki Haley et al. to The Honorable Thomas E. Wheeler, Chairman, FCC (May 21, 2016) (Haley Letter); Letter from James A. Gondles, Jr., Executive Director, ACA, to Marlene H. Dortch, Secretary, FCC (June 24, 2015) (ACA *Ex Parte*); Letter from Dan J. Wigger, Vice President and Managing Director, MAS, CellBlox Acquisitions, LLC, to Marlene H. Dortch, Secretary, FCC at 1-2 (July 26, 2016).

<sup>2</sup> These are systems in place in correctional facilities which use radio communication signals (requiring Commission authorization) to combat the contraband wireless device problem. See *infra* para. 19.

<sup>3</sup> See, e.g., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Cell Phones Behind Bars at 1 (Dec. 2009) (NIJ Bulletin), available at <https://www.ncjrs.gov/pdffiles1/nij/227539.pdf>; U.S. Government Accountability Office, Report to Congressional Committees, Bureau of Prisons: Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection, GAO-11-893 (Sept. 2011) (GAO Report), available at [https://www.gao.gov/new\\_items/d11893.pdf](https://www.gao.gov/new_items/d11893.pdf); The Pew Charitable Trusts, Research and Analysis, Stateline, States Bedeviled by Contraband Cellphones in Prisons (June 7, 2016) (Pew Report).

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used within prisons for a variety of criminal purposes, e.g., to run an identity theft-ring, threaten a state Senator and his family, direct the murder of a state witness, and order the murder of a witness who testified at trial.<sup>4</sup> The GAO reported that the number of cell phones confiscated by the Federal Bureau of Prisons (BOP) in federal prisons increased from 1,774 in 2008 to 3,684 in 2010.<sup>5</sup> More recently, according to BOP data, cell phones have remained, since 2012, one of the most prevalent dangerous contraband items recovered by the BOP.<sup>6</sup> Between 2012 and 2014, more than 8,700 cell phones were recovered in federal prisons, 2,012 more than the next most common type of contraband, weapons.<sup>7</sup> The BOP acknowledges the significant danger posed by contraband cell phones, including threatening and intimidating witnesses, victims, and public officials and coordinating contraband smuggling and escape attempts.<sup>8</sup> In January 2016, the U.S. Department of Justice indicted more than fifty individuals for allegedly operating fraud and money laundering schemes from within Georgia state prisons using contraband cell phones.<sup>9</sup>

4. Data from state prison systems also indicate that contraband wireless device use in these facilities continues to be a significant public safety issue. For example, in April 2014, the California Department of Corrections and Rehabilitation reported that staff confiscated 12,151 phones in prisons in 2013, up from 11,788 in 2012, and 2,809 for the first three months of 2014.<sup>10</sup> In Georgia, the nation's fourth largest state prison system, officials confiscated more than 13,500 phones in 2014,<sup>11</sup> and more than 23,500 phones between 2014 and 2015.<sup>12</sup> In 2015, prison officials in South Carolina confiscated 4,107 cell phones and in Mississippi confiscated over 3,000 cell phones.<sup>13</sup> The record in this proceeding discussed below includes reports of instances of criminal activity directed through the use of contraband wireless devices.<sup>14</sup> Various news reports describe the evolving methods of smuggling wireless devices into prisons by, e.g., drone or a tossed football,<sup>15</sup> as well as methods in which crime and violence is

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<sup>4</sup> GAO Report at 23-24.

<sup>5</sup> *Id.* at 20 tbl.3.

<sup>6</sup> U.S. Department of Justice, Office of the Inspector General, Review of the Federal Bureau of Prisons' Contraband Interdiction Efforts at 4 (June 2016) (OIG Report).

<sup>7</sup> OIG Report at i.

<sup>8</sup> *Id.*

<sup>9</sup> See U.S. Department of Justice, U.S. Attorney's Office, Northern District of Georgia, More Than 50 Individuals Charged in Massive Corruption Fraud and Money Laundering Schemes Operated from inside Georgia State Prisons (Jan. 21, 2016) (DOJ GA Release), <https://www.justice.gov/usao-ndga/pr/more-50-individuals-charged-massive-corruption-fraud-and-money-laundering-schemes>.

<sup>10</sup> California Department of Corrections and Rehabilitation, Fact Sheet April 2014.

<sup>11</sup> Lisa Riordan Seville and Hannah Rappleye, *Cell Extortion: Inmate Phones Leading to Violence, Fraud*, NBC News (Mar. 24, 2015), <http://www.nbcnews.com/news/us-news/cell-phones-n327311>.

<sup>12</sup> See DOJ GA Release.

<sup>13</sup> See Pew Report at 3, 4.

<sup>14</sup> See, e.g., Marcus Spectrum Solutions Comments at 1. See Appendix E for a full list of parties that filed comments in this proceeding.

<sup>15</sup> See Michael Rosenwald, *Prisons Try to Stop Drones from Delivering Drugs, Porn and Cellphones to Inmates*, Wash. Post (Oct. 12, 2016), [https://www.washingtonpost.com/local/prisons-try-to-stop-drones-from-delivering-drugs-porn-and-cellphones-to-inmates/2016/10/12/645fb102-800c-11e6-8d0c-fb6c00c90481\\_story.html?utm\\_term=.ea7e474630da](https://www.washingtonpost.com/local/prisons-try-to-stop-drones-from-delivering-drugs-porn-and-cellphones-to-inmates/2016/10/12/645fb102-800c-11e6-8d0c-fb6c00c90481_story.html?utm_term=.ea7e474630da); *Inmate Sentenced for Contraband-Loaded Football Scheme*,

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perpetrated using contraband phones in prisons.<sup>16</sup> For instance, in early 2016, a Georgia inmate was indicted for ordering the revenge killing of a nine month old baby from prison with a cell phone, and prisoners in an Alabama state prison posted videos taken at a riot with contraband cell phones on Facebook.<sup>17</sup> A Georgia inmate and gang member reportedly used a contraband cellphone to order the murder of a 25-year-old father in November 2015 for misusing a \$500 loan.<sup>18</sup> A Florida inmate reportedly ran a multi-state drug ring from his contraband cellphone, collecting up to \$1 million per week in methamphetamine sales.<sup>19</sup> Overall, the record in this proceeding reflects consensus that prisoner use of contraband wireless devices continues to be a serious threat to the safety of correctional staff, other inmates, and the general public.<sup>20</sup>

5. *Current Technologies.* As a general matter, there are primarily two categories of technological solutions currently deployed today in the U.S. to address the issue of contraband wireless device use in correctional facilities: managed access and detection.<sup>21</sup> We briefly review these technologies below.

6. *Managed Access.* A managed access system (MAS) is a micro-cellular, private network that typically operates on spectrum already licensed to wireless providers offering commercial subscriber services in geographic areas that include a correctional facility. These systems analyze transmissions to and from wireless devices to determine whether the device is authorized or unauthorized by the correctional facility for purposes of accessing wireless carrier networks. A MAS utilizes base stations that are optimized to capture all voice, text, and data communications within the system coverage area. When a wireless device attempts to connect to the network from within the coverage area of the MAS, the system cross-checks the identifying information of the device against a database that lists wireless devices authorized to operate in the coverage area. Authorized devices are allowed to communicate normally (i.e., transmit and receive voice, text, and data) with the commercial wireless network, while transmissions to or from unauthorized devices are terminated. A MAS is capable of being programmed not to interfere with 911 calls. The systems may also provide an alert to the user notifying the user that the device is unauthorized. A correctional facility or third party at a correctional facility may operate a MAS if authorized by the Commission,<sup>22</sup> and this authorization has, to date, involved agreements with the wireless providers serving the geographic area within which the correctional facility is located, as well as

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Associated Press (June 13, 2016), <http://bigstory.ap.org/article/95748b904fe94dc9976c03a7647e3290/inmate-sentenced-contraband-loaded-football-scheme>.

<sup>16</sup> See, e.g., Brendan Farrington, *Prisoners' Use of Smuggled Cellphones on the Rise*, Associated Press (Feb. 16, 2014), <http://newsok.com/article/feed/651956>; Colleen Jenkins, *Smuggled Cellphone Use a Growing Concern for U.S. Prisons*, Reuters (Apr. 16, 2014), <http://www.reuters.com/article/us-usa-prison-mobilephone-idUSBREA3H0B320140418>.

<sup>17</sup> See Pew Report at 2.

<sup>18</sup> See Joshua Sharpe, *Testimony: \$500 the Motive for Inmate Gang Boss Who Ordered Lawrenceville Hit Job*, Gwinnett Daily Post (Feb. 24, 2016), [http://www.gwinnettdaily.com/local/cities/lawrenceville/testimony-the-motive-for-inmate-gang-boss-who-ordered-lawrenceville/article\\_55c47060-8149-5840-a334-31f5f6a9fae0.html](http://www.gwinnettdaily.com/local/cities/lawrenceville/testimony-the-motive-for-inmate-gang-boss-who-ordered-lawrenceville/article_55c47060-8149-5840-a334-31f5f6a9fae0.html).

<sup>19</sup> See Sheila Stogsdill, *Multi-State Drug Ring Reportedly Collected \$1 Million a Week*, Miami News Record (May 16, 2016), <http://www.miamiok.com/news/20160516/multi-state-drug-ring-reportedly-collected-1-million-week/1>.

<sup>20</sup> See, e.g., AJA Comments at 1, ACA Reply at 1, MSDOC Comments at 1, DDOC Comments at 1.

<sup>21</sup> See NTIA Report at 1.

<sup>22</sup> See 47 CFR §§ 1.9001-1.9080. The Commission's spectrum leasing rules implicated by managed access systems are discussed in detail *infra* Section III.

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spectrum leasing applications approved by the Commission.<sup>23</sup>

7. *Detection.* Detection systems are used to detect devices within a correctional facility by locating, tracking, and identifying radio signals originating from a device. Traditionally, detection systems use passive, receive-only technologies that do not transmit radio signals and do not require separate Commission authorization.<sup>24</sup> However, detection systems have evolved with the capability of transmitting radio signals to not only locate a wireless devices, but also to obtain device identifying information. These types of advanced transmitting detection systems also operate on frequencies licensed to wireless providers and require separate Commission authorization, also typically through the filing of spectrum leasing applications reflecting wireless provider agreement.

8. *Commission Action.* The Commission has taken a variety of steps to facilitate the deployment of technologies by those seeking to combat the use of contraband wireless devices in correctional facilities, including authorizing spectrum leases between CMRS providers<sup>25</sup> and MAS providers and granting Experimental Special Temporary Authority (STA) for testing managed access technologies,<sup>26</sup> and also through outreach and joint efforts with federal and state partners and industry to facilitate development of viable solutions. Since 2010, the Commission has authorized deployment of managed access systems<sup>27</sup> at approximately 52 correctional facilities in 17 states to combat the contraband wireless device problem.<sup>28</sup> In addition, Commission staff has worked with stakeholder groups, including our federal agency partners, wireless providers, technology providers, and corrections agencies, to encourage the development of technological solutions to combat contraband wireless device use while avoiding interference with legitimate communications. On September 30, 2010, the Commission held a public workshop in partnership with the Association of State Correctional Administrators (ASCA) and the Department of Justice's National Institute of Justice (NIJ) to discuss technologies available to combat contraband wireless device use.<sup>29</sup> NIJ continues to examine solutions to combat the problem.<sup>30</sup>

9. In December 2010, the National Telecommunications and Information Administration (NTIA), pursuant to Congressional direction and in coordination with the Commission, BOP, and NIJ,

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<sup>23</sup> See *infra* Section III.A.

<sup>24</sup> Some of these devices are scanning receivers subject to Part 15 requirements. See 47 CFR § 15.121.

<sup>25</sup> Unless otherwise specifically clarified herein, for purposes of this Order and Further Notice, we use the terms CMRS provider, wireless provider, and wireless carrier interchangeably. These terms typically refer to entities that offer and provide subscriber-based services to customers through Commission licenses held on commercial spectrum in geographic areas that might include correctional facilities.

<sup>26</sup> See CellBlox, Inc., Experimental Special Temporary Authorizations, Call Signs WI9XZR, WG9XWH, WI9XMB, WJ9XMT, WJ9XRF, WJ9XRG; ShawnTech Communications, Inc., Experimental Special Temporary Authorization, Call Signs WI9XEB, WI9XAW.

<sup>27</sup> Some of these authorizations are for detection systems rather than MASs.

<sup>28</sup> See Universal Licensing System (ULS) and OET databases as of February 10, 2017; see also, e.g., Screened Images, Inc., Lease IDs L000013066, L000013068, L000015305, L000017746; CellAntenna Corporation, Lease IDs L000011643, L000011638, L000017357.

<sup>29</sup> An archived video of the workshop, written remarks, presentations, statements, briefing sheet, and a transcript are available through the Commission's Website at <http://www.fcc.gov/events/workshopwebinar-contraband-cell-phone-use-prisons>. See *Public Safety and Homeland Security Bureau to Hold Workshop/Webinar on Contraband Cell Phone Use in Prisons*, Public Notice (Sept. 13, 2010).

<sup>30</sup> See generally <http://nij.gov/topics/corrections/institutional/contraband/Pages/cell-phones.aspx>.

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issued a report detailing the specific problem of contraband wireless device use in correctional facilities.<sup>31</sup> NTIA found that inmate use of contraband cell phones is intolerable and “[p]rison officials should have access to technology to disrupt prison cell phone use in a manner that protects nearby public safety and Federal Government spectrum users from harmful disruption of vital services, and preserves the rights of law-abiding citizens to enjoy the benefits of the public airwaves without interference.”<sup>32</sup>

10. Also in 2010, legislation was enacted that classified wireless devices as “prohibited objects” within federal prisons<sup>33</sup> and provided penalties to punish federal inmates who possess wireless devices or anyone who provides inmates with wireless devices.<sup>34</sup> This legislation led to the GAO Report, which examined the issues and recommended actions for the Attorney General “[t]o help BOP respond more effectively to contraband cell phone challenges.”<sup>35</sup> On the state level, several states have conducted trials and invested in technologies that will enable them to combat contraband wireless device use. Currently, a substantial majority of states have enacted state laws making possession and/or use of wireless devices in correctional facilities a crime.<sup>36</sup>

11. *Notice of Proposed Rulemaking.* On May 1, 2013, the Commission issued the *Notice* in order to examine various technological solutions to the contraband problem and proposals to facilitate the deployment of these technologies.<sup>37</sup> In the *Notice*, the Commission proposed a series of modifications to its rules to facilitate spectrum leasing agreements between wireless providers and providers or operators

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<sup>31</sup> See U.S. Department of Commerce, National Telecommunications and Information Administration, *Contraband Cell Phones in Prisons: Possible Wireless Technology Solutions* at 4 (Dec. 2010) (NTIA Report), available at [http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport\\_december2010pdf](http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport_december2010pdf).

<sup>32</sup> *Id.* at 1.

<sup>33</sup> Cell Phone Contraband Act of 2010, Pub. L. No. 111-225, 124 Stat. 2387 (2010) (codified at 18 U.S.C. § 1791). Other objects that federal prisoners are prohibited from possessing include, but are not limited to, firearms, ammunition, weapons, controlled substances, and U.S. or foreign currency. 18 U.S.C. § 1791(d).

<sup>34</sup> Pub. L. No. 111-225, sec. 2, 124 Stat. at 2387; 18 U.S.C. § 1791(b)(4). Specifically, whoever “in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object; shall be punished as provided in [18 U.S.C. § 1791(b)].” 18 U.S.C. § 1791(a). Section 1791(b) of Title 18 establishes punishments for violations of Section 1791 based on the type of prohibited object involved in the violation. *Id.* § 1791(b).

<sup>35</sup> GAO Report at 33.

<sup>36</sup> See Ala. Code § 14-11-50; Alaska Stat. §§ 11.56.380, 11.56.390; Ariz. Rev. Stat. Ann. § 13-2501, 2505 (2010); Ark. Code Ann. § 5-54-119 (2009); Cal. Penal Code § 4575 (2007); Colo. Rev. Stat. Ann. § 18-8-204 (2005); Conn. Gen. Stat. § 53a-250(1), (2), 251, 174b (2010); D.C. Code §§ 22-2603.01-03 (2011); 11 Del. C. § 1256 (2008); Fla. Stat. Ann. § 944.47 (West 2008); O.C.G.A. § 42-5-18 (2008); HRS § 710.1023(1)(b), (2), HAR 23-101-1; I.C. § 18,2510(3)(c), (5)(c)(iv) (2012); 720 Ill. Comp. Stat 5/31A-1.1 through 1.2 (2011); Ind. Code § 35-44.1-3-8; I.C. § 719.7A(1)(a), (2)(b); Kan. Stat. Ann. § 21-5914(a)(3), (b); K.Y. Rev. Stat. §§ 520.010, 520.050; LA. Rev. Stat. Ann. § 14:402 (2010); Md. Code Ann., Criminal Law § 9-417 (2007); Mich. Comp. Laws Ann. §§ 800.283a, 285 (2006); Miss. Code Ann. §§ 47-5-193, 195 (2008); Nev. Rev. Stat. Ann. § 212.165 (West 2007); N.H. Rev. Stat. § 642:7; N.J.S. § 2C:29-10(b); NY Penal Law 205.25; N.C. Gen. Stat. Ann. § 14-258.1 (West 2009); N.D. Cent. Code Ann. § 12-44.1-21 (West 2009); 57 Ok.St. § 21(B), (E); 2013 ORS §§ 162.135(1)(a)(D), 162.185; 18 Pa. Cons. Stat. Ann. § 5123 (West 2002); R.I. Gen. Laws Ann. § 11-25-14.1 (West 2011); SC Code 1976 § 24-7-155; Tenn. Code. Ann. § 39-16-201 (2006); Tex. Penal Code Ann. § 38.11 (2011); VA. Code Ann. § 18.2-43.1 (2016); W. VA. Code § 61-5-8 (2009); Wyo. Stat. Ann. § 6-5-213 (2007).

<sup>37</sup> Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, *et al.*, GN Docket No. 13-111, *et al.*, *Notice of Proposed Rulemaking*, 28 FCC Rcd 6603 (2013) (*Notice*).

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of a MAS used to combat contraband wireless devices.<sup>38</sup> Those proposed modifications include revised rules that would permit the streamlining and immediate processing of *de facto* transfer spectrum leasing applications or spectrum manager leasing notifications for spectrum used exclusively in a MAS in correctional facilities, and the streamlining of the process for seeking STAs to operate a MAS.<sup>39</sup> The proposals also include the establishment of a presumption that managed access operators provide a private mobile radio service (PMRS),<sup>40</sup> which would reflect more accurately the likely regulatory classification of the service provided by a MAS, rather than continuing the CMRS regulatory status of the lessor wireless provider. This would obviate the need for most MAS operators to make currently required additional spectrum leasing modification filings in order to be regulated as a PMRS.<sup>41</sup>

12. Specifically, the Commission proposed to modify its rules and procedures to make qualifying long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications for a MAS in a correctional facility subject to immediate processing and approval, even when the grant of multiple spectrum leasing applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions.<sup>42</sup> The Commission proposed that its grant or acceptance of qualifying managed access spectrum leasing applications would be indicated one business day after filing in ULS.<sup>43</sup> To further expedite the approval process, the Commission also proposed to amend Section 20.9 of its rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers will be presumptively treated as PMRS because the managed access provider is not offering service to the public or a substantial portion of the public.<sup>44</sup> Accordingly, the lessee would not need to file a separate, additional application to request PMRS treatment subsequent to spectrum lease approval or acceptance. With regard to the PMRS presumption, the Commission sought additional comment on whether it should apply its 911 and enhanced 911 (E911) rules applicable to CMRS licensees to managed access services in correctional facilities that provide access to 911 and E911.<sup>45</sup>

13. In the *Notice*, the Commission acknowledged that, given its proposals to expedite processing and grant of qualifying managed access spectrum leasing applications, it does not anticipate that managed access providers will typically utilize the STA process prior to the approval or acceptance of a spectrum leasing application.<sup>46</sup> Nevertheless, the Commission sought comment on whether a streamlined STA process would serve to expedite the entire deployment timeframe for managed access operators that need to test a system or operate on an emergency basis.<sup>47</sup> The Commission proposed to make the changes necessary to electronically process STA applications for market-based licenses (such as

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<sup>38</sup> *See id.* at 6621-28, paras. 36-52.

<sup>39</sup> *See id.*

<sup>40</sup> A PMRS is “neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service” and is not subject to common carrier obligations. *See* 47 CFR § 20.3; 47 U.S.C. § 332(c)(2).

<sup>41</sup> *See Notice*, 28 FCC Rcd at 6621-28, paras. 36-52.

<sup>42</sup> *See id.* at 6621-22, para. 38; *see also* 47 CFR §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

<sup>43</sup> *Notice*, 28 FCC Rcd at 6621-22, para. 38.

<sup>44</sup> *Id.* at 6624-25, para. 45.

<sup>45</sup> *Id.* at 6625, para. 46.

<sup>46</sup> *Id.* at 6627, para. 51.

<sup>47</sup> *Id.*

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PCS and 700 MHz).<sup>48</sup> In connection with the streamlining of the managed access spectrum leasing notification and application process, the Commission also sought comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility at which a MAS is installed, and if so, the details and costs of such notification.<sup>49</sup> Finally, regarding the streamlining of the regulatory processes for MAS use, the Commission sought comment on additional proposals, such as rule or procedural changes that could expedite the spectrum leasing process and thereby encourage and facilitate the deployment of these systems in correctional facilities.<sup>50</sup>

14. In addition to proposing rules to streamline MAS spectrum leasing procedures, the Commission proposed in the *Notice* to require CMRS licensees to terminate service, if technically feasible, to a detected contraband wireless device pursuant to a qualifying request from an authorized correctional facility official.<sup>51</sup> The Commission sought comment on the proposed detection and termination approach,<sup>52</sup> as well as the possible effectiveness of voluntary carrier participation in an industry-wide effort to terminate service to contraband wireless devices.<sup>53</sup> The Commission's proposal is consistent with the CellAntenna 2011 Petition requesting rule changes that would require wireless carriers to suspend service to unauthorized wireless devices operating in correctional facilities discovered by a detection system.<sup>54</sup> The Commission also sought comment on each of the steps involved in the process of terminating service to contraband wireless devices, including the specific information the correctional facility must transmit to the wireless provider to effectuate termination, the timing for device termination, the method of authenticating a termination request, and other issues.<sup>55</sup>

15. Subsequent to the *Notice*, Commission staff conducted substantial outreach, including providing guidance to stakeholders regarding the Commission's filing processes for authorizing use of technologies to combat contraband wireless device use, and meeting with a variety of stakeholders, ranging from wireless providers to MAS and detection providers to correctional associations, in an effort to continue to find effective solutions to the problem of contraband wireless devices in correctional facilities.<sup>56</sup> More recently, Commission staff met with interdiction system providers using alternative technologies, for example, a system that would disable contraband wireless devices in correctional

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<sup>48</sup> *Id.*

<sup>49</sup> *Notice*, 28 FCC Rcd at 6624, para. 44.

<sup>50</sup> *Id.* at 6627-28, para. 52.

<sup>51</sup> *Id.* at 6629-35, paras. 56-73.

<sup>52</sup> *Id.* at 6630-31, para. 60; *see* 47 U.S.C. § 303.

<sup>53</sup> *Notice*, 28 FCC Rcd at 6629-30, para. 58.

<sup>54</sup> *Id.* at 6628-29, paras. 54-55; Amendment of Section 20.5 of the Commission's Rules, 47 CFR § 20.5, to Categorically Exclude Service to Wireless Devices Located on Local, State, or Federal Correctional Facility Premises, PRM11WT (filed Sept. 2, 2011) (CellAntenna 2011 Petition).

<sup>55</sup> *Id.* at 6630, para. 59.

<sup>56</sup> *See, e.g., ACA Ex Parte*; Letter from Brian M. Josef, Asst. VP, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (Dec. 4, 2014) (*CTIA Ex Parte*); Letter from Brian J. Benison, AT&T, to Marlene H. Dortch, Secretary, FCC (Dec. 22, 2014) (*AT&T December Ex Parte*); Letter from Marjorie K. Conner, Counsel to CellAntenna, to Marlene H. Dortch, Secretary, FCC (Mar. 10, 2014) (*CellAntenna March Ex Parte*); Letter from Daniel R. Hackett, Chief Financial Officer, ShawnTech, to Marlene H. Dortch, Secretary, FCC (Aug. 7, 2015); Letter from Deniz H. Hardy, Counsel for Tecore, to Marlene H. Dortch, Secretary, FCC (Nov. 5, 2013) (*Tecore 2013 Ex Parte*); Letter from Dan J. Wigger, Vice President and Managing Director, MAS, CellBlox Acquisitions, LLC, to Marlene H. Dortch, Secretary, FCC (July 26, 2016).

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facilities through a beacon system interacting with software proposed to be imbedded in all wireless devices.<sup>57</sup> Furthermore, the Commission has continued to approve leases and STAs authorizing testing and deployment of MAS and other types of advanced detection systems in correctional facilities across the country.

16. On April 6, 2016, Chairman Ajit Pai, then Commissioner, held a field hearing in Columbia, South Carolina, hosted by former South Carolina Governor Nikki Haley, on the topic of inmate use of contraband cell phones. The hearing included a discussion of problems and potential solutions, with testimony from departments of corrections and public safety officials, as well as CTIA and interdiction solution providers, among other panelists.<sup>58</sup> After the field hearing, former Governor Haley and nine other governors submitted a letter emphasizing the serious threat to public safety posed by contraband cell phones today and encouraging the Commission to streamline the regulatory review process and permit states to install cost-efficient interdiction systems that do not sacrifice the safety of the general public.<sup>59</sup> In today's action, we take concrete steps to facilitate the use of technologies intended to combat the growing problem of contraband wireless device use in correctional facilities nationwide.

### III. REPORT AND ORDER

17. As explained above, a MAS analyzes communications to and from wireless devices to determine whether the device is authorized or unauthorized by the correctional facility.<sup>60</sup> If the device is authorized, the communication is connected to the carrier's commercial network; if the device is unauthorized, the communication is terminated.<sup>61</sup> Because a MAS uses base stations that transmit and receive signals on frequencies licensed to wireless carriers, managed access operators require Commission authorization and CMRS licensee consent to operate.<sup>62</sup> Thus far, wireless carriers and those seeking to deploy a MAS have used the Commission's spectrum leasing procedures to obtain the required authorization. In this regard, the Commission's *Notice* acknowledged that its relevant spectrum leasing rules and procedures could be cumbersome and time-consuming in light of the public safety concerns at issue, such that they could delay deployment of these systems or even deter their use.<sup>63</sup> The Commission

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<sup>57</sup> See Letter from John J. Fischer, CEO, Try Safety First, Inc., to Marlene H. Dortch, Secretary, FCC (June 14, 2016); Letter from John J. Fischer, CEO, Try Safety First, Inc., to Marlene H. Dortch, Secretary, FCC (Aug. 29, 2016); Letter from John J. Fischer, CEO, Try Safety First, Inc., to Marlene H. Dortch, Secretary, FCC (Feb. 20, 2017), collectively, *Try Safety Ex Parte Letters*; see also Letter from David Gittelson, President, Prelude Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 30, 2016).

<sup>58</sup> See News Release, FCC, Commissioner Ajit Pai Announces Agenda for Field Hearing on Contraband Cellphones (Mar. 28, 2016), <https://www.fcc.gov/document/commissioner-pai-announces-field-hearing-contraband-cellphones>; see also Remarks of FCC Commissioner Ajit Pai at Contraband Cellphone Field Hearing, Columbia, South Carolina (April 6, 2016), <https://www.fcc.gov/commissioner-pai-remarks-contraband-cellphones-hearing-video>. For more information on the event, panelists, and remarks, see FCC, Events, Commissioner Pai's Field Hearing on Contraband Cellphones, Apr. 6, 2016, <https://www.fcc.gov/news-events/events/2016/04/commissioner-pais-field-hearing-contraband-cellphones>.

<sup>59</sup> See Haley Letter. In response, former Chairman Wheeler expressed his shared concern and intent to continue to work with stakeholders to find solutions to the problem. See Letter from Tom Wheeler, Chairman, FCC, to The Honorable Nikki R. Haley, Office of the Governor, South Carolina (June 8, 2016).

<sup>60</sup> See *supra* para. 6.

<sup>61</sup> See *Notice*, 28 FCC Rcd at 6617, para. 24.

<sup>62</sup> *Id.* at 6617-18, para. 26.

<sup>63</sup> *Id.* at 6617, para. 24.

(continued....)

also stated that the STA process for managed access providers can be equally time-consuming.<sup>64</sup>

18. To date, managed access providers deploying in correctional facilities have sought to implement a complete solution that includes consent from all wireless carriers operating in a geographic area covering a correctional facility, so that any communication from a variety of contraband wireless devices can be captured. Failure to secure consent and Commission authorization from all wireless carriers in an area could result in a proliferation of contraband wireless device use on the spectrum not covered by the interdiction system. Accordingly, individual spectrum leasing agreements are negotiated with each wireless carrier serving the geographic area of the correctional facility.<sup>65</sup> The number of spectrum leasing arrangements also increases in situations where there are multiple correctional facilities in various geographic locations served by several different wireless carriers. Upon the conclusion of spectrum leasing negotiations, the managed access provider and relevant wireless carriers jointly seek approval from the Commission pursuant to our spectrum leasing rules for each agreement. After receipt of approval of a spectrum leasing arrangement, the lessee often applies to the Commission again to modify its regulatory status from CMRS to PMRS, a process that requires additional time and financial resources. With regard to STA requests, applicants must file at least ten days prior to operation, and the application is typically placed on public notice.<sup>66</sup> Additionally, STA requests to operate on spectrum licensed on a geographic area basis must be filed manually.<sup>67</sup>

19. In the *Notice*, the Commission's streamlining proposals were focused on spectrum leasing arrangements for MASs. Importantly, as technologies evolve, many advanced detection systems have also been designed to transmit radio signals typically already licensed to wireless providers in areas that include correctional facilities. Consequently, operators of these types of advanced detection systems require Commission authorization and may also choose to negotiate with wireless providers to obtain such authorization through the Commission's spectrum leasing procedures, similar to a MAS operator. In its comments, Verizon recognizes this evolution and suggests that many detection systems transmit radio signals and, therefore, require an FCC authorization, typically either pursuant to a spectrum leasing agreement or an STA.<sup>68</sup> Accordingly, Verizon suggests that the Commission clarify that the spectrum leasing and STA request streamlining measures would apply to any detection system operators that transmit RF signals, not just MAS providers.<sup>69</sup> Given the evolution of technologies to combat contraband device use and the variety of detection systems that could require the same type of authorizations that a MAS requires, we agree with Verizon that the streamlined processes we are adopting in this Order should not be limited to those seeking to deploy a MAS, but should also be available to stakeholders seeking to obtain operational authority to deploy advanced detection type technologies that transmit RF and are subject to Commission authorization to combat contraband wireless device use in a correctional facility.<sup>70</sup> We will refer to any system that transmits radio communication signals comprised of one or more stations

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<sup>64</sup> *Id.* at 6620, para. 34.

<sup>65</sup> *Id.* at 6617-18, para. 26.

<sup>66</sup> *Id.* at 6620, para. 34.

<sup>67</sup> *Id.*

<sup>68</sup> Verizon Comments at 2-3.

<sup>69</sup> *Id.*

<sup>70</sup> For purposes of this Order and Further Notice, "contraband wireless device" refers to any wireless device, including the physical hardware or part of a device – such as a subscriber identification module (SIM) – that is used within a correctional facility in violation of federal, state, or local law, or a correctional facility rule, regulation, or policy. We use the phrase "correctional facility" to refer to any facility operated or overseen by federal, state, or local authorities that houses or holds criminally charged or convicted inmates for any period of time, including privately owned and operated correctional facilities that operate through contracts with federal, state, or local jurisdictions.

used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices as a Contraband Interdiction System (CIS). By definition, therefore, the streamlined rules we adopt in this Order and processes proposed in the Further Notice are limited to correctional facilities' use, given the important public safety implications in combatting contraband wireless device use.

20. In this Order, we adopt rules to facilitate the deployment of CISs by streamlining the Commission's processes governing STA requests and spectrum leasing arrangements entered into exclusively to combat the use of unauthorized wireless devices in correctional facilities. Specifically, as explained below, we take action today so that qualifying spectrum leasing applications or notifications for CISs will be subject to immediate processing and disposition; parties will not have to separately file amendments to become PMRS (or CMRS); and the process for obtaining STA for these systems will be streamlined. Although we either decline to adopt, or seek further comment on, certain proposals, as explained below, we believe that the changes adopted in today's Order will have a real and tangible impact. We believe the revised rules are in the public interest and strike the appropriate balance among the need to minimize regulatory barriers to CIS deployment, maintain an effective spectrum leasing review process, and avoid service disruption to wireless devices outside of correctional facilities.

#### **A. Streamlined Spectrum Leasing Application Approval and Notification Processing**

21. Pursuant to our current secondary market rules, licensee lessors and their lessees have three spectrum leasing options that each provide different rights and responsibilities for the licensee and lessee: long-term (more than one year) *de facto* transfer spectrum leasing arrangements; short-term (less than one year) *de facto* transfer spectrum leasing arrangements; and spectrum manager spectrum leasing arrangements (both short-term and long-term).<sup>71</sup> The Commission's rules require that the parties to a *de facto* transfer spectrum leasing arrangement file an application for approval of the lease with the Commission.<sup>72</sup> Parties to a spectrum manager lease must file a notification of the spectrum leasing arrangement with the Commission and can commence operations without prior Commission approval after a short period.<sup>73</sup> The Commission's rules provide for expedited processing (by the next business day) of all categories of spectrum leasing applications and notifications.<sup>74</sup> To be accepted for processing, any application or notification must be "sufficiently complete," including information and certifications relating to a lessee's eligibility and qualification to hold spectrum, and lessee compliance with the

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<sup>71</sup> Notice, 28 FCC Rcd at 6618, para. 28.

<sup>72</sup> 47 CFR §§ 1.9030(a), (e), 1.9035(a), (e).

<sup>73</sup> *Id.* § 1.9020(e)(1). Under general notification procedures, spectrum manager leases for more than one year must be filed at least 21 days prior to the date of operation. Spectrum manager leases of one year or less must be filed at least 10 days prior to the date of operation. *Id.* § 1.9020(e)(1)(ii). We note that under immediate approval processes, acceptance of the notification will be reflected in ULS on the next business day following the day the application is filed, and spectrum manager lessees may operate upon acceptance consistent with the terms of the leasing arrangement. *Id.* § 1.9020(e)(2)(ii).

<sup>74</sup> *Id.* §§ 1.9020(e)(2), 1.9030(e)(2), 1.9035(e). See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503, 17512, para. 14, n.42 (2004) (*Second Secondary Market Report and Order*) ("[U]nder the immediate approval process, spectrum leasing parties must submit qualifying applications and include the requisite filing fees. The [Wireless Telecommunications] Bureau will then process the application overnight and . . . indicate in our Universal Licensing System (ULS) that the application has been approved."). Applications and notifications are filed on FCC Form 608, "FCC Application or Notification for Spectrum Leasing Arrangement." 47 CFR § 1.913(a)(5).

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Commission's foreign ownership rules.<sup>75</sup> *De facto* transfer spectrum leasing applications must also be accompanied by the requisite filing fee.<sup>76</sup>

22. Long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications must meet three additional criteria for immediate approval or processing.<sup>77</sup> First, the lease cannot involve spectrum that may be used to provide an interconnected mobile voice/and or data service and that would result in a geographic overlap with licensed spectrum "in which the proposed spectrum lessee already holds a direct or indirect interest of 10 [percent] or more."<sup>78</sup> Second, the licensee cannot be "a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules."<sup>79</sup> Finally, the spectrum leasing arrangement cannot "require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules."<sup>80</sup>

23. Significantly, as CIS deployment at a given correctional facility will require the system operator to obtain multiple spectrum leasing arrangements for the same geographic area (to enable the system to prevent contraband wireless devices from accessing any of the multiple telecommunications services whose footprint covers the facility), no spectrum lease after the first one can be given immediate processing under our current rules because each subsequent spectrum lease involves spectrum that would necessarily result in a geographic overlap (i.e., the area where the correctional facility is located) with licensed spectrum in which the operator already holds a direct or indirect interest of ten percent or more (i.e., the interest represented by the spectrum lease or leases that the operator had already procured from one (or more) of the other carriers whose service area includes the correctional facility). Thus, the system operator will be unable to meet the first criterion for expedited processing.<sup>81</sup> Without expedited processing, approval of most spectrum leasing applications takes at least several weeks to a few months from the date of filing, delaying deployment of the system.<sup>82</sup>

24. In the *Notice*, the Commission proposed to modify its rules and procedures to make qualifying long-term *de facto* spectrum leasing applications and spectrum manager leasing notifications for MAS in correctional facilities subject to immediate processing and disposition, even when the grant of multiple spectrum leasing applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions.<sup>83</sup> The Commission proposed that a grant or acceptance of qualifying managed access spectrum leasing arrangements would be indicated one business day after

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<sup>75</sup> 47 CFR §§ 1.9020(e)(2)(i), 1.9030(e)(2)(i), 1.9035(e).

<sup>76</sup> *Id.* §§ 1.9030(e)(1)(i), (e)(2)(i), 1.9035(e)(1). *See also id.* § 1.9020(e)(1)(i). We note that governmental entities are not required to pay filing fees. *See id.* § 1.1116(f) ("For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.").

<sup>77</sup> *Id.* §§ 1.9020(e)(2)(i)(A)-(C), 1.9030(e)(2)(i)(A)-(C). All short-term *de facto* transfer spectrum leasing applications are processed via immediate approval procedures. *See id.* § 1.9035(e).

<sup>78</sup> *Id.* §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

<sup>79</sup> *Id.* §§ 1.9020(e)(2)(i)(B), 1.9030(e)(2)(i)(B).

<sup>80</sup> *Id.* §§ 1.9020(e)(2)(i)(C), 1.9030(e)(2)(i)(C). Short-term *de facto* lease applications must also meet this requirement. *Id.* § 1.9035(e)(1).

<sup>81</sup> *See supra* para. 21; *Notice*, 28 FCC Rcd at 6619, para. 31.

<sup>82</sup> *See Notice* at 6619-20, para. 32.

<sup>83</sup> *See id.* at 6621-22, para. 38; *see also* 47 CFR §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

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filing in ULS.<sup>84</sup>

25. The record reflects widespread support – across all stakeholders – for the proposed rule and procedural modifications to streamline the spectrum leasing process for MASs in correctional facilities.<sup>85</sup> The carriers generally support the Commission’s streamlining proposals. AT&T “welcomes” the proposed modifications to the existing spectrum leasing process between wireless carriers and MAS vendors and believes the proposed measures will reduce the amount of time and resources required to complete a lease.<sup>86</sup> Similarly, Verizon supports the Commission’s streamlining proposals, noting that the changes will benefit the public by “speeding approval and deployment of managed access and detection systems.”<sup>87</sup> CTIA supports the proposals and believes that they are “targeted, narrowly focused, and will enable a more efficient deployment of managed access systems – a result plainly in the public interest.”<sup>88</sup> Although the carriers have additional suggestions and caveats with respect to the streamlining of the Commission’s spectrum leasing process for these systems, as described below, they fundamentally support the reforms as in the public interest.

26. Both MAS operators and proponents of detection and termination systems acknowledge the benefits that will flow from streamlining the spectrum leasing process for MASs. Tecore, for example, notes that the procedural rule changes will make a significant difference in reducing the time needed for the deployment of a MAS.<sup>89</sup> CellAntenna supports the Commission’s streamlining proposals as a way to promote the deployment of MASs and ease the burden on corrections officials.<sup>90</sup> Likewise, a variety of other commenting parties support the Commission’s streamlining proposals, even if some suggest that additional measures are required to make material progress in combating contraband wireless devices.<sup>91</sup>

27. By and large, the corrections community advocates for the use of any and all measures to combat contraband wireless devices in correctional facilities, including MASs.<sup>92</sup> ACA states that it is important that the Commission “streamline the application process for spectrum lease agreements as much as possible.”<sup>93</sup> The Maryland Department of Public Safety and Correctional Services supports the Commission’s proposal to streamline lease authorizations for MASs as a way to reduce overall costs and “expedite correctional system’s ability to procure and install these systems.”<sup>94</sup> The Minnesota Department of Corrections also believes that any simplification of the licensing process will speed deployment of MASs and “ultimately has a positive impact on public safety.”<sup>95</sup> The California

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<sup>84</sup> Notice at 6621-22, para. 38.

<sup>85</sup> See, e.g., Verizon Comments at 2-3; AT&T Comments at 3; CTIA Comments at 4-5; MSDOC Comments at 1; ShawnTech Comments at 3-4; CellBlox Comments at 1.

<sup>86</sup> AT&T Comments at 2-3.

<sup>87</sup> Verizon Comments at 3.

<sup>88</sup> CTIA Comments at 4-5.

<sup>89</sup> Tecore Comments at 17.

<sup>90</sup> CellAntenna Comments at 6.

<sup>91</sup> See, e.g., AICC Comments at 6; MSS Comments at 24 (the streamlining proposals will facilitate deployment of MAS where practical and cost-effective).

<sup>92</sup> See, e.g., FDOC Comments at 1; DDOC Comments at 2.

<sup>93</sup> ACA Comments at 3.

<sup>94</sup> MDPSCS Comments at 2.

<sup>95</sup> MNDOC Comments at 1.

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Department of Corrections and Rehabilitation echoes this comment regarding increased safety in its comments, supporting the proposed streamlining changes in order to aid in more expedient deployment, “thereby contributing to a safer correctional environment for staff, inmates, and the public.”<sup>96</sup> The Mississippi Department of Corrections also supports any measures to streamline the spectrum leasing process for use in correctional facilities.<sup>97</sup>

28. Consistent with the broad support by commenters for the streamlining proposals set forth in the *Notice*, we hereby adopt those proposals, with certain exceptions, as discussed herein. We amend Part 1 rules<sup>98</sup> as necessary to implement the CIS (consisting to date largely of both MAS and advanced detection systems) spectrum leasing streamlining proposals. Qualifying long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications for CISs will be subject to immediate processing and approval, even when the grant of multiple spectrum lease applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions, pursuant to the procedures set forth below. Because we determine that qualifying spectrum leases for CISs do not raise the potential public interest concerns that would necessitate prior public notice or more individualized review, we believe that removing this unnecessary layer of notice and review is appropriate. At the same time, our modified process ensures that granted or accepted spectrum leases will be placed on public notice and subject to the Commission’s reconsideration procedures under rule Section 1.106.<sup>99</sup>

29. *Competition.* The crux of the Commission’s streamlining proposals in the *Notice* for the spectrum leasing process for systems in correctional facilities is its proposal to immediately process spectrum lease applications or notifications regardless of whether approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses.<sup>100</sup> The rationale for eliminating the lengthy notice and review process for overlapping spectrum here is that, in the CIS context, the typical competition concerns are not present because CISs are not providing service to the public and generally there is only one CIS provider in a particular correctional facility.<sup>101</sup> With the widespread accord of commenters in this proceeding, we hereby amend Sections 1.9003, 1.9020, and 1.9030 of the Commission’s rules to enable the immediate processing of spectrum lease applications or notifications for CISs regardless of whether the approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses.<sup>102</sup>

30. *Designated Entity/Entrepreneur Eligibility.* In the *Notice*, the Commission sought comment on its proposal to immediately process spectrum lease applications and notifications for MASs in correctional facilities regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions.<sup>103</sup> The Commission suggested,

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<sup>96</sup> CDCR Comments at 3.

<sup>97</sup> MSDOC Comments at 1.

<sup>98</sup> We amend Sections 1.9003, 1.9020, and 1.9030 of our rules, 47 CFR § 1.9003 (defining “Contraband Interdiction System”), § 1.9020 (spectrum manager leasing arrangements), and § 1.9030 (long-term *de facto* transfer leasing arrangements), in order to implement immediate processing and approval for CIS leases in correctional facilities (see Appendix A).

<sup>99</sup> 47 CFR § 1.106.

<sup>100</sup> *Notice*, 28 FCC Rcd at 6622, para. 40.

<sup>101</sup> *Id.*

<sup>102</sup> See 47 CFR §§ 1.9003, 1.9020, and 1.9030.

<sup>103</sup> *Notice*, 28 FCC Rcd at 6623, para. 41.

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essentially, that these type of leases do not implicate the public interest concerns regarding compliance with these rules that would require a more detailed and time-consuming review of the filings.<sup>104</sup> The Commission's unjust enrichment rules and transfer restrictions are designed to prevent a designated entity or entrepreneur from gaining from the special benefits conferred with the designation by selling or transferring the license,<sup>105</sup> and to ensure that "small business participation in spectrum-based services is not thwarted by transfers of licenses to non-designated entities."<sup>106</sup> Further, the Commission's affiliation and controlling interests rules for designated entities are meant to prevent a non-eligible affiliate of a designated entity from gaining through the special benefits conferred with the designation.<sup>107</sup> These rules were crafted pursuant to the Communications Act's requirement that the auction rules promulgated by the Commission ensure that certain designated entities have the opportunity to participate in the provision of wireless service, and that these rules contain such transfer disclosures and anti-trafficking restrictions as may be necessary to prevent unjust enrichment.<sup>108</sup>

31. After consideration of the record, we find it in the public interest to adopt the Commission's proposal to immediately process CIS spectrum lease applications, regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions, given that CIS lease arrangements, by definition, involve transactions between wireless providers and solutions providers or potentially departments of corrections, specifically designed to enable correctional institutions to interdict wireless devices used illegally on the premises of the institution. As such, these spectrum leasing arrangements are not readily susceptible to abuse by designated entities who might otherwise lease spectrum to ineligible lessees in order to gain some measure of unjust enrichment. Moreover, nothing in our expedited processing of CIS lease applications will have an adverse impact on the ability of a small business to participate in Commission processes to acquire spectrum or to provide wireless services. And, in any event, in the unlikely case where unjust enrichment obligations are triggered by a CIS leasing arrangement, our action today does not insulate a designated entity from its obligations to comply with the unjust enrichment requirements of the rules; rather, this action only exempts the underlying CIS lease application from processing under general approval procedures.

32. *Procedural Requirements.* In order to effectuate the streamlining of the MAS spectrum leasing process, the Commission proposed in the *Notice* modifications to FCC Form 608 – the form used by licensees and lessees to notify or apply for authority to enter into spectrum leasing arrangements.<sup>109</sup> First, the Commission proposed to permit managed access providers and wireless licensees to identify that a proposed spectrum lease is a managed access lease to be used exclusively for a system in a correctional facility.<sup>110</sup> Second, the Commission proposed to require managed access providers to attach a written certification to the application or notification explaining the nature of the MAS, including the

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<sup>104</sup> *Id.*

<sup>105</sup> See 47 CFR § 1.2111.

<sup>106</sup> *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use; 4660-4685 MHz*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374, 406, para. 52 (1997).

<sup>107</sup> See 47 CFR § 1.2110(c)(2); *Second Secondary Market Report and Order*, 19 FCC Rcd at 17538, para. 71. A controlling interest is an entity or individual with *de jure* or *de facto* control over the designated entity. 47 CFR § 1.2110(c)(2).

<sup>108</sup> See *Second Secondary Market Report and Order*, 19 FCC Rcd at 17538, para. 71; 47 U.S.C. § 309(j)(4)(D)-(E).

<sup>109</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 6623, para. 42; 47 CFR § 1.913(a)(5). See also FCC Form 608, FCC Application or Notification for Spectrum Leasing Arrangement, [www.fcc.gov/forms](http://www.fcc.gov/forms).

<sup>110</sup> *Notice*, 28 FCC Rcd at 6623, para. 42.

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location of the correctional facility, the provider's relationship with the facility, and the exact coordinates of the leased spectrum boundaries.<sup>111</sup> The purpose of these proposed modifications is to enable the Commission to identify managed access spectrum leases and subject them to immediate processing and approval, where appropriate.

33. The record does not contain specific comments regarding the proposed modifications to FCC Form 608 to effectuate immediate processing of MAS leases for correctional facilities. However, the record reflects significant support for any measures necessary to streamline the regulatory process for MASs. Consistent with current practice, we expect that spectrum leasing parties desiring to avail themselves of our streamlined process for CISs will include in their submissions a brief description of their system sufficient to enable Commission staff to determine that the lease is in fact for a CIS.<sup>112</sup> Because a change to Form 608 would require corresponding changes to ULS, including costly reprogramming and additional time to implement, we will instead establish internal procedures to ensure that qualified spectrum lease filings for CISs are identified and handled according to immediate processing procedures.

34. If the spectrum leasing parties submit their lease application or notification for a CIS via ULS, and the filing establishes that the proposed spectrum lease is for a CIS, is otherwise complete, and the payment of any requisite filing fees has been confirmed, then the Wireless Telecommunications Bureau (WTB) will process the application or notification and provide immediate grant or acceptance through ULS processing. Approval will be reflected in ULS on the next business day after filing the application or notification. Upon receipt of approval, spectrum lessees will have authority to commence operations under the terms of the spectrum lease, allowing for immediate commencement of operations provided that the parties have established the approval date as the date the lease commences.<sup>113</sup> Consistent with current procedures, the Bureau will place the granted or accepted application or notification on public notice and the action will be subject to petitions for reconsideration.<sup>114</sup>

35. *Completeness Requirement.* In the *Notice*, the Commission proposed to maintain the completeness standards for spectrum lease notifications and applications as they currently exist in the spectrum leasing rules.<sup>115</sup> Currently, licensees and lessees file FCC Form 608<sup>116</sup> and must complete all relevant fields and certifications on the form.<sup>117</sup> If a spectrum lease application or notification is sufficiently complete, but there exist questions as to the lessee's eligibility or qualification to lease spectrum based on the responses or certifications, then the application or notification is not eligible for immediate processing.<sup>118</sup> We find that continuing to require a CIS spectrum lease application to be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include the requisite filing fee serves an

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<sup>111</sup> *Id.*

<sup>112</sup> To the extent a lease filing provides insufficient information to enable Commission staff to identify and process the request as one involving a CIS, the processing may be delayed.

<sup>113</sup> *See id.* at 6621-22, para. 38.

<sup>114</sup> *See id.* at 6623-24, para. 43.

<sup>115</sup> *Id.* at 6622, para. 39. Under the leasing rules, applications or notifications that are subject to immediate processing or approval must be "sufficiently complete." 47 CFR §§ 1.9020(e)(2)(i), 1.9030(e)(2)(i), 1.9035(e).

<sup>116</sup> 47 CFR § 1.913(a)(5).

<sup>117</sup> *See* FCC Form 608 at 9-11. In addition, *de facto* applications must be accompanied by the requisite filing fee. 47 CFR §§ 1.9030(e), (e)(2), 1.9035(e).

<sup>118</sup> *See* 47 CFR §§ 1.9020(e)(1), 1.9030(e)(1).

(continued....)

important public interest purpose and, with no record opposition, we adopt the Commission's proposal.

## **B. Regulatory Status**

36. *PMRS Presumption.* When a CIS provider enters into a spectrum lease agreement with a wireless carrier with a CMRS regulatory status, the regulatory status of the lessor applies to the lessee such that the regulatory status of the managed access lessee is CMRS, unless changed, and the lessee is subject to common carrier obligations.<sup>119</sup> However, most CISs in the correctional facility context qualify as PMRS, which would exempt the lessee from common carrier obligations.<sup>120</sup> To change its regulatory status from CMRS to PMRS, a CIS lessee must file, for each approved lease, separate modification applications that are subject to additional public notice periods which, the Commission noted, may further delay CIS deployment.<sup>121</sup>

37. In the *Notice*, the Commission proposed to amend Section 20.9 of its rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers will be presumptively treated as PMRS because the managed access provider is not offering service to the public or a substantial portion of the public.<sup>122</sup> Under this proposal, the lessee would not need to separately file an application requesting PMRS treatment subsequent to spectrum lease approval or acceptance. Instead, the PMRS status would automatically attach to all spectrum lease applications or notifications that indicate that the leased spectrum would be used solely for the operation of a CIS in a correctional facility.

38. As described above, there is widespread support for the Commission's proposals to streamline the spectrum leasing process for CIS providers, which includes the PMRS presumption.<sup>123</sup> The CIS operators specifically note their support for the PMRS presumption.<sup>124</sup> For example, Tecore supports the presumption and suggests that it will "further increase managed access deployment by expediting the administrative requirements involved with these services."<sup>125</sup> The California Department of Corrections and Rehabilitation also directly offers its support of a rule amendment to establish the PMRS presumption for MASs in correctional facilities.<sup>126</sup>

39. We generally agree with commenters that reducing burdens associated with CIS operators' compliance with Commission rule Section 20.9,<sup>127</sup> as proposed in the *Notice*, is in the public interest. However, we note that in 2016, the Commission proposed to eliminate Section 20.9 in a separate proceeding.<sup>128</sup> We find it unnecessary at this time to amend Section 20.9 of the Commission's rules because we can achieve the same goal of reducing administrative costs and filing burdens through interim relief, subject to Commission action in the CMRS Presumption Notice proceeding. We therefore find

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<sup>119</sup> *Notice*, 28 FCC Rcd at 6620, para. 33; *see* 47 U.S.C. § 332(c)(1).

<sup>120</sup> *Notice*, 28 FCC Rcd at 6620, para. 33.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 6624-25, para. 43.

<sup>123</sup> *See, e.g.*, CTIA Comments at 4-5; MSDOC Comments at 1; ShawnTech Comments at 3-4.

<sup>124</sup> *See, e.g.*, Tecore Comments at 18; ShawnTech Comments at 4.

<sup>125</sup> Tecore Comments at 18.

<sup>126</sup> CDCR Comments at 3.

<sup>127</sup> 47 CFR § 20.9.

<sup>128</sup> *See Amendments To Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption*, Notice of Proposed Rulemaking, 31 FCC Rcd 8470 (2016) (CMRS Presumption Notice).

(continued....)

good cause to grant a waiver<sup>129</sup> of Section 20.9, to the extent necessary, so that CIS operators will not be required to file a separate modification application to reflect PMRS regulatory status subsequent to approval or acceptance of the lease. Rather, the CIS operator will be permitted to indicate in the exhibit to its lease application whether it is PMRS or CMRS for regulatory status purposes,<sup>130</sup> and the approved or accepted spectrum lease will subsequently reflect that regulatory status. This waiver will accomplish the shared goal of the Commission and the commenters<sup>131</sup> of enabling CIS operators to be treated as PMRS without having to file an additional modification application with the Commission, or be subject to the 30 day public notice period applicable to certain radio services.<sup>132</sup> We believe a waiver at this time will conserve resources and reduce burdens on the spectrum leasing parties and Commission staff and will expedite overall deployment of CIS in correctional facilities.

40. *911 and E911.* In the *Notice*, the Commission sought comment on whether the Commission should apply its 911 and E911 rules to MASs in correctional facilities that, if they are presumed to be PMRS, are not applicable, since only CMRS licensees are required to comply with 911 obligations.<sup>133</sup> The Commission also sought comment on the costs and benefits of applying some or all of the Commission's 911 and E911 rules to a managed access provider regulated as PMRS.

41. Comment varied concerning the implications of a PMRS presumption on 911 services. By and large, the comments generally suggest agreement that MASs should have the capability to route 911 calls to the appropriate public safety answering point (PSAP), and that the correctional facility, managed access operator, and/or the local PSAP should be involved in making the routing decision regarding a specific correctional facility.<sup>134</sup> Tecore recommends that a MAS must support direct handling of E911 emergency calls with direct routing to the PSAP.<sup>135</sup> In support of this proposal, Tecore reasons that the Commission has imposed standards in other situations where public safety and welfare have been involved.<sup>136</sup> Indeed, Tecore explains that MASs can actually facilitate public safety services because they have the ability to complete 911 calls in a way that provides important public safety data while otherwise restricting service.<sup>137</sup> ShawnTech also believes that MASs must include the ability to support emergency calling to the appropriate PSAPs, but that the agency should set the rules and policies for the facility so as to either enable or disable the emergency calling features.<sup>138</sup>

42. CTIA and the wireless carriers, in contrast, do not take a firm stance one way or the other

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<sup>129</sup> See 47 CFR § 1.3.

<sup>130</sup> See *supra* para. 36. Pursuant to our streamlined leasing process, spectrum leasing parties seeking a lease for a CIS in a correctional facility will include a brief description of the CIS sufficient to enable the Commission staff to determine that the lease is in fact for a CIS. In this submission, the parties will also identify whether they request PMRS or CMRS regulatory status.

<sup>131</sup> See *supra* para. 38.

<sup>132</sup> See, e.g., 47 CFR § 20.9(b) (Broadband PCS).

<sup>133</sup> *Notice*, 28 FCC Rcd at 6625, para. 46.

<sup>134</sup> We are aware that certain states' requests for proposals for the provision of CISs in correctional facilities require the blocking of unauthorized wireless communications, with the exception of 911 emergency calls, thus ensuring such call access to wireless provider networks and then PSAPs. See, e.g., California RFP Sections 6.16 and 6.18.1.

<sup>135</sup> Tecore Comments at 8, n.15.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 20 & n.43 (explaining that the capacity for calls from the correctional institutions can be limited to the dedicated set of trunks from the correctional facility to the PSAP).

<sup>138</sup> ShawnTech Comments at 4; see also CellBlox Comments at 2.

(continued....)

regarding the obligation of a managed access operator to comply with 911 obligations.<sup>139</sup> CellAntenna, however, argues that MASs should not be required to complete 911 calls because 911 access remains available by landline and assistance is available to corrections officers through internal communications.<sup>140</sup> In fact, CellAntenna states that allowing 911 calls from unauthorized wireless devices in correctional facilities holds the potential for harassment of PSAPs and there is no reason to permit any 911 calls from wireless devices originating within a correctional facility.<sup>141</sup> Similarly, ACA states that “any and all cell phone signals originating from inside a correctional facility – including E-911 – are illegal signals.”<sup>142</sup>

43. Some commenters suggest that emergency calls should be delivered to the PSAP unless the specific PSAP concludes that emergency calls coming from a particular facility should be blocked. This recommendation appears in GTL’s original petition, which states that the local PSAP operator is in the best position to determine whether blocking particular area 911 calls is in the public interest.<sup>143</sup> MSS acknowledges that there is no general solution to the problem of the role of 911 in MASs and recommends that the Commission allow PSAP operators and MAS operators to negotiate on a case-by-case basis regarding the handling of E911 calls.<sup>144</sup>

44. We agree with commenters that delivering emergency calls to PSAPs facilitates public safety services and generally serves the public interest,<sup>145</sup> and acknowledge the overriding importance of ensuring availability of emergency 911 calls from correctional facilities. We also act based on our long-standing recognition of the important role that state and local public safety officials play in the administration of the 911 system. We thus amend Commission rule 20.18 to require CIS providers regulated as PMRS to route all 911 calls to the local PSAP. At the same time, we recognize that, based on extensive experience assessing local community public safety needs, PSAPs should be able to inform the CIS provider that they do not wish to receive 911 calls from a given correctional facility, and CIS providers must abide by that request. We agree with commenters that this approach is warranted given the reported increased volume of PSAP harassment through repeated inmate fraudulent 911 calls.<sup>146</sup> We clarify that CIS providers are not subject to the 911 routing requirement to the extent that they deploy a technology only to obtain identifying information from a contraband wireless device, and not to capture a call from a correctional facility that will either be terminated or forwarded to a serving carrier’s network based on contraband status. Further, we find it appropriate to delay the effectiveness of the 911 call forwarding requirement until no earlier than 270 days following publication of a summary of this Order and Further Notice in the Federal Register.<sup>147</sup> We anticipate this will provide CIS operators and local

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<sup>139</sup> See AT&T Comments at 6; Verizon Comments at 4; CTIA Comments at 5.

<sup>140</sup> CellAntenna Reply at 11.

<sup>141</sup> CellAntenna Comments at 2.

<sup>142</sup> ACA Reply at 3; *see also* ACA *Ex Parte*, submitting for the record a copy of ACA’s resolution, reaffirmed in 2013, regarding contraband devices that includes a resolution in support of efforts to block all calls, including 911 calls, from contraband devices inside correctional facilities.

<sup>143</sup> GTL Petition at 14.

<sup>144</sup> MSS Comments at 26-27.

<sup>145</sup> See Tecore Comments at 20.

<sup>146</sup> See, e.g., Letter from David S. Robinson, Sheriff, Kings County, California, February 19, 2013 (reporting a high volume of false 911 calls from inmates in the Avenel State Prison that flooded the system and could have potentially delayed legitimate emergency response); CDCR Comments at 3-4; CellAntenna Reply at 10-11; GTL Petition at 14; ACA Comments at 3.

<sup>147</sup> See *infra* para. 144.

(continued....)

PSAPs a sufficient opportunity to determine whether routing of 911 calls is appropriate, if there is no current agreement. We also anticipate that wireless providers and CIS operators may use this period to update current contractual provisions addressing 911 call routing issues, if necessary.

45. We find this overall approach to 911 call forwarding to be consistent with the Commission's guidance clarifying that our 911 rules requiring mobile wireless carriers to forward all wireless 911 calls to PSAPs, without respect to the call validation process, does not preclude carriers from blocking fraudulent 911 calls from non-service initialized phones pursuant to applicable state and local law enforcement procedures.<sup>148</sup> Again, we note that CIS operators are often required to pass through 911 and E911 calls through contracts with wireless provider lessors. Overall, we believe that the ability to make an emergency call and access emergency services, to the extent these are available in a correctional facility, is in the public interest, and our amended rule ensures this continued access, where appropriate, subject to PSAP discretion to not accept 911 calls.

### **C. Streamlined Special Temporary Authority Request Processing**

46. In deploying CISs to combat contraband wireless device use in correctional facilities, a spectrum leasing arrangement with relevant wireless carriers as approved by the Commission is the appropriate mechanism for long-term CIS operation. However, in certain circumstances, there may be a justifiable need for emergency temporary authorization for system testing, where special temporary authority may be appropriate. Pursuant to existing rules, a CIS provider that seeks STA for its proposed operations must file such a request at least ten days prior to the applicant's proposed operation.<sup>149</sup> Unless the STA application is exempt, it must be placed on public notice.<sup>150</sup> Certain STA applications must also be filed manually.<sup>151</sup>

47. As an additional measure designed to expedite the deployment of MASs in correctional facilities, the Commission proposed to exempt managed access providers seeking an STA for a MAS in a correctional facility from the requirement that they file the application ten days prior to operation.<sup>152</sup> Further, the Commission proposed to process an STA request without prior public notice and modify FCC Form 601 so that applicants would be able to identify that the application is being filed for a MAS in a correctional facility.<sup>153</sup> Finally, the Commission proposed to modify ULS to electronically process STA applications for market-based licenses.<sup>154</sup> Pursuant to the proposed streamlined STA procedures, the Commission also noted that applicants would still be required to satisfy all of the existing STA application requirements to be granted STA.<sup>155</sup>

48. In the *Notice*, the Commission acknowledged that, given its proposals to expedite processing and grant and acceptance of qualifying managed access leases, the Commission does not anticipate that managed access providers will typically utilize the STA process prior to the approval or

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<sup>148</sup> See *FCC Clarifies that 911 Call Forwarding Rule Does Not Preclude Wireless Carriers From Blocking Fraudulent 911 Calls From Non-Service Initialized Phones Pursuant to State and Local Law*, Public Notice, 17 FCC Rcd 21877 (2002). See also *In the Matter of 911 Call-Forwarding Requirements for Non-Service Initialized Phones*, Notice of Proposed Rulemaking, 30 FCC Rcd 3449 (2015).

<sup>149</sup> *Notice*, 28 FCC Rcd at 6620, para. 34; 47 CFR § 1.931(a).

<sup>150</sup> *Notice*, 28 FCC Rcd at 6620, para. 34.

<sup>151</sup> See 47 CFR § 1.913(d).

<sup>152</sup> *Notice*, 28 FCC Rcd at 6627, para. 50; see 47 CFR § 1.931(a).

<sup>153</sup> *Notice*, 28 FCC Rcd at 6627, para. 50.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

(continued....)

acceptance of a lease.<sup>156</sup> Nevertheless, the Commission sought comment on whether a streamlined STA process would serve to expedite the entire deployment timeframe for managed access operators that need to test a system or operate on an emergency basis.<sup>157</sup>

49. The carriers generally support the Commission's proposal to streamline the STA request process and agree that the proposed changes should expedite approval and deployment of MASs.<sup>158</sup> Verizon supports the STA proposals, but questions whether the proposal would change the Commission's existing practice of verifying consent from the CMRS licensee prior to STA approval.<sup>159</sup> Accordingly, Verizon requests that the Commission clarify through a rule modification that STA requests must include consent letters from each affected CMRS licensee prior the STA approval.<sup>160</sup> CTIA also supports the STA streamlining proposals, but only "so long as the existing requirement to obtain and demonstrate carrier consent continues to apply."<sup>161</sup> Like Verizon, CTIA seeks a rule modification that makes explicit the carrier consent requirement in the STA process.<sup>162</sup> This clarification in the rules, they claim, would not impose any additional burden in the process because consent letters are already part of the existing process.<sup>163</sup>

50. One commenter, ShawnTech, does not support the Commission's proposal to modify the STA process to allow for expedited processing without prior public notice.<sup>164</sup> Rather, without explaining its reasoning, ShawnTech states its preference for the existing process.<sup>165</sup> In contrast, CellBlox supports the proposal to streamline the STA approval process for MASs in correctional facilities without prior public notice.<sup>166</sup>

51. After consideration of the record, we conclude that streamlining the STA process will facilitate the deployment of CISs, along with our adoption of the Commission's other streamlining proposals for expediting and encouraging spectrum leasing for CISs.<sup>167</sup> The record includes significant support for any measures necessary to implement streamlining as a general matter, some broad support specifically for STA streamlining, and unsupported opposition to STA streamlining from one commenter.<sup>168</sup> We believe that given the expedited CIS leasing process for full system deployment adopted herein, CIS operators will not generally need to rely on the modified STA process. However, we seek to streamline our rules wherever possible and provide options for obtaining expedited STA for short term emergency operations that qualify for temporary authority under our rules. Because qualifying CIS spectrum leasing arrangements will be subject to immediate processing pursuant to our revised rules, we

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<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *See, e.g.*, CTIA Comments at 5.

<sup>159</sup> Verizon Comments at 3.

<sup>160</sup> *Id.*

<sup>161</sup> CTIA Comments at 5.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> ShawnTech Comments at 4.

<sup>165</sup> *Id.*

<sup>166</sup> CellBlox Comments at 2.

<sup>167</sup> *See supra* Section III.A.

<sup>168</sup> *See supra* paras.49-50.

(continued....)

will also conform our STA application rules for CIS operations to expedite processing.

52. Therefore, we adopt the Commission's proposal and amend Section 1.931 of the Commission's rules to exempt CIS providers seeking STA for a CIS from the requirement that they file the application ten days prior to operation.<sup>169</sup> We will process qualifying STA requests for CISs on an expedited basis and without prior public notice. However, for the same cost and resource-based reasons specified for not amending Form 608 for leases, we also find it unnecessary to modify Form 601 in order to achieve our streamlining goal of immediate processing of STAs for CISs. In the same way that we intend to process lease applications and notifications – i.e., establishing internal procedures to ensure that qualified filings are identified and handled according to immediate processing procedures – we similarly intend to process STAs. Staff will review the STA filing and assess whether it is for a CIS in order to reliably determine whether the filing is subject to immediate processing.<sup>170</sup> We note that these STA applicants will continue to be required to comply with all existing requirements to be granted STA,<sup>171</sup> including our practice of requiring applicants to file letters of consent from the CMRS carriers involved.<sup>172</sup>

53. In the *Notice*, the Commission proposed to make the changes necessary to electronically process STA applications for market-based licenses (e.g., PCS and 700 MHz).<sup>173</sup> The record lacks comment on this issue. However, as a result of the Commission's flexible licensing policies in many services permitting the siting of facilities anywhere within the geographic license area, we have determined that very few applications are filed by market-based licensees seeking special temporary authority for a specific site location. Accordingly, while our rules mandate electronic filing for virtually all applications, because there are so few of them, ULS is not programmed to receive STA applications for spectrum licensed on a market basis. Such applications are currently filed manually along with a request for waiver of the electronic filing requirement.<sup>174</sup> We will continue at this time to permit manual filing of an application for STA for CIS operation in a correctional facility, noting that the proposed electronic processing of STA applications necessitates substantial and costly changes to our ULS software and certain database updates that are not currently in place. To further streamline our filing processes and reduce filing burdens, we find good cause to grant a waiver<sup>175</sup> of the electronic filing requirement under Section 1.913 of the Commission's rules, so that market-based licensees seeking STA for CIS operation in a correctional facility are not required to request a waiver of the requirement with their manual applications.<sup>176</sup> We also anticipate that our streamlining changes adopted today for processing lease applications for CIS authority in correctional facilities will reduce the number of requests for temporary authority using STA application procedures.

54. In response to the carriers' suggestion that we modify the Commission's rules to make carrier consent explicit in the STA approval process, we find it unnecessary to modify our rules because,

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<sup>169</sup> See 47 CFR § 1.931; Appendix A.

<sup>170</sup> To the extent an STA filing provides insufficient information to enable Commission staff to identify and process the request as one involving a CIS, the processing may be delayed.

<sup>171</sup> *Notice*, 28 FCC Rcd at 6627, para. 50; see also 47 CFR § 1.931(a).

<sup>172</sup> However, as discussed *infra* Section III.E. and pursuant to this Order, the Commission may issue an STA to an entity seeking to deploy a CIS in a correctional facility without carrier consent if, after a 45 day period, we determine that there has not been good faith lease agreement negotiations.

<sup>173</sup> *Notice*, 28 FCC Rcd at 6627, para. 50.

<sup>174</sup> *Id.* at 6620, para. 34; see also 47 CFR §§ 1.931(a), 1.913(b), (d).

<sup>175</sup> See 47 CFR § 1.3.

<sup>176</sup> See 47 CFR § 1.913(b), (d).

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even under our streamlined process, we will maintain our current policy that STA requests for CISs must be accompanied by carrier consent.<sup>177</sup> STA applications will still be required to meet all the existing requirements to be granted STA.<sup>178</sup>

#### **D. Compliance with Sections 308, 309, and 310(d) of the Act**

55. In the *Second Secondary Market Report and Order*, the Commission exercised forbearance in order to immediately process, without public notice or prior Commission review or consent, *de facto* transfer spectrum leasing applications that met eligibility and use restrictions but did not require a waiver or declaratory ruling and did not raise issues regarding competition, designated entity or entrepreneurship restrictions, or other public interest concerns.<sup>179</sup> In the *Notice*, the Commission proposed to extend that forbearance authority in order to immediately process *de facto* transfer spectrum leasing applications for MASs in correctional facilities that do not raise concerns with use and eligibility restrictions, that do not require a waiver or declaratory ruling with respect to a Commission rule, but that do involve leases of spectrum in the same geographic area or involve designated entity rules, affiliation restrictions, unjust enrichment prohibitions, and transfer restrictions.<sup>180</sup> Specifically, the Commission proposed to forbear from the applicable prior public notice requirements and individualized review requirements of Sections 308, 309, and 310(d) of the Act.<sup>181</sup> The Commission sought comment in the *Notice* on whether the statutory forbearance requirements are met for its forbearance proposal.<sup>182</sup>

56. Section 10 of the Act authorizes the Commission to forbear from applying any regulation or provision of the Act to a telecommunications carrier or telecommunications service, or any class of telecommunications carriers or telecommunications services, if:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>183</sup>

In the *Second Secondary Market Report and Order*, the Commission found that the forbearance prongs were met for *de facto* transfer spectrum leasing applications that did not raise concerns with eligibility and use restrictions, foreign ownership restrictions, designated entity or entrepreneur restrictions, competition concerns, or other public interest concerns.<sup>184</sup> The Commission based its decision on its finding that even spectrum lease applications that were not immediately processed were not reviewed for the impact on the practices or charges of the providers, and therefore forbearance would have no impact on practices or charges.<sup>185</sup> Further, it found that a more thorough application review for leases qualifying for immediate

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<sup>177</sup> See *supra* note 172 (carrier consent not required where STA may be issued due to lack of good faith negotiations).

<sup>178</sup> See 47 CFR § 1.931(a).

<sup>179</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512-13, 17521-23, paras. 15, 34-37.

<sup>180</sup> See *Notice*, 28 FCC Rcd at 6625-26, para. 47.

<sup>181</sup> *Id.*; 47 U.S.C. §§ 308, 309, 310(d).

<sup>182</sup> See *Notice*, 28 FCC Rcd at 6626-27, para. 49.

<sup>183</sup> 47 U.S.C. § 160(a).

<sup>184</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512-13, para. 15.

<sup>185</sup> *Id.* at 17522, para. 35.

(continued....)



approval was not necessary to protect consumers because the Commission had concluded that it would only immediately approve applications that did not raise public interest concerns.<sup>186</sup> Finally, the Commission concluded that forbearance from public notice and individualized Commission review were in the public interest because leases that did not raise public interest concerns would be approved quickly, reducing transaction costs, speeding time to market of services, improving spectrum access and efficiency, and increasing consumers' access to advanced wireless services.<sup>187</sup>

57. We hereby exercise our forbearance authority in order to implement the streamlining proposals adopted herein for *de facto* transfer CIS spectrum leases and STAs. For the reasons discussed in the *Second Secondary Market Report and Order*, we conclude that CIS leases also generally qualify for the forbearance granted to all *de facto* transfer spectrum leases.<sup>188</sup> We find that the statutory forbearance requirements are met for qualifying *de facto* transfer CIS spectrum leases that involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment provisions and transfer restrictions. As discussed *supra*, CISs necessarily involve overlapping spectrum in the same geographic area and likely are not contrary to the intent and purpose behind our rules governing unjust enrichment or transfer restrictions.<sup>189</sup> We also find that the statutory forbearance requirements are met for STA applications for CIS providers that comply with the necessary expedited processing procedures in our rules. No commenter opposed our proposal that a streamlined approval process for CIS leases and STAs would facilitate technologies used to prevent inmates from using contraband wireless devices in correctional facilities.

#### **E. Standardization of the Leasing Process**

58. In the *Notice*, the Commission sought comment on additional proposals, such as rule or procedural changes, that could expedite the spectrum leasing process and thereby encourage and facilitate the deployment of MASs in correctional facilities.<sup>190</sup> In response, some commenters suggest that the Commission consider additional mandates to facilitate managed access implementation by "standardizing" the leasing process and/or the leases themselves. The main proponent of lease standardization, Tecore, requests that, failing forthcoming voluntary cooperation among the carriers, the Commission should mandate that carriers enter into lease agreements on commercially reasonable terms and conditions upon reasonable request; that a shot clock be in place to ensure that final agreements are executed between the managed access provider and all area carriers in a reasonable time; that leased access to spectrum be provided free of charge by the carrier; and that a model lease agreement be established and approved by the Commission with standard terms and conditions.<sup>191</sup> Tecore claims that the model lease would eliminate lengthy negotiation processes.<sup>192</sup>

59. In its comments, MSS reiterates GTL's proposal from its original petition that the Commission should require CMRS carriers to agree to managed access leases of their spectrum if technically feasible in a specific installation without undue harm to legitimate CMRS uses.<sup>193</sup> MSS

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<sup>186</sup> *Id.* at 17522-23, para. 36.

<sup>187</sup> *Id.* at 17523, para. 37.

<sup>188</sup> *See id.* at 17522-23, paras. 35-37.

<sup>189</sup> *See supra* paras. 23-25.

<sup>190</sup> *Notice*, 28 FCC Rcd at 6627-28, para. 52.

<sup>191</sup> Tecore Comments at 11-16; *see also* Tecore 2013 *Ex Parte*; Letter from Steve Harsham, Vice President, Chief Technology Officer, Tecore, to Marlene H. Dortch, Secretary, FCC (Nov. 17, 2015) (Tecore 2015 *Ex Parte*).

<sup>192</sup> *See* Tecore Comments at 15.

<sup>193</sup> MSS Comments at 24.

(continued....)

supports a mandate that would require carriers to enter into leases for MASs because of the need for all carriers in the relevant area to sign a lease, not just the major carriers.<sup>194</sup> In other words, having the major carriers onboard to execute reasonable leases is not sufficient because they do not control all of the CMRS licenses near correctional facilities.<sup>195</sup> MSS contends that all CMRS carriers must agree to the leases necessary to implement managed access on reasonable financial terms in order for this solution to be successful, and this agreement requires a Commission mandate in order to be a reasonable expectation.<sup>196</sup> ACA agrees with MSS, and GTL in its original petition, that the Commission should implement requirements that all CMRS carriers must agree to managed access leases of their spectrum if technically feasible in a specific installation.<sup>197</sup>

60. The thrust of the carriers' opposition to model leases, standardization of the process, and mandatory leasing is their belief that the Commission should not interfere with the carriers' spectrum rights and the business relationships between the carriers and the managed access providers, and that the proposals would be unnecessarily burdensome.<sup>198</sup> In opposing the lease mandates proposed by Tecore and others to further facilitate MAS implementation through mandatory standardization, Verizon notes that the record lacks evidence of particular problems with deployment of MASs that would merit the Commission's imposition of mandatory solutions.<sup>199</sup> Specifically, Verizon discusses the fact that the lease negotiation process has become easier and quicker as time passes, and that Verizon uses the same template in all of its lease agreements with managed access providers so that it is relatively easy for vendors to become familiar with the terms and conditions and negotiate subsequent agreements.<sup>200</sup> In addition, Verizon notes that it does not charge fees for managed access leasing.<sup>201</sup>

61. CTIA also discusses the lack of evidence necessary to justify Commission mandates interfering with the business relationships between carriers and managed access providers.<sup>202</sup> In that regard, CTIA believes that a shot clock, for example, is unnecessary and potentially harmful, noting what it describes as the strong record of cooperation between carriers and managed access providers.<sup>203</sup> CTIA indicates that a shot clock could even be harmful because the lease for an initial deployment may necessarily and appropriately take longer for testing and evaluation, while subsequent deployments are often quicker such that a shot clock for later leases would be unnecessary.<sup>204</sup> CTIA believes that, lacking any evidence of problems with the system, a rule regarding fees charged to lease spectrum or the adoption of a "model lease" would be an inappropriate and unnecessary intrusion into private business negotiations.<sup>205</sup>

62. Although the record does not indicate a material, persistent problem with the MAS lease

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<sup>194</sup> *Id.* at 24-26.

<sup>195</sup> *Id.* at 25.

<sup>196</sup> *Id.*

<sup>197</sup> ACA Reply at 3.

<sup>198</sup> *See, e.g.*, CTIA Reply at 12.

<sup>199</sup> Verizon Reply at 5.

<sup>200</sup> *Id.* at 6.

<sup>201</sup> *Id.*

<sup>202</sup> CTIA Reply at 12-13.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 13.

(continued....)

negotiation process between managed access operators and the major CMRS licensees, we emphasize that the effectiveness of CIS deployment requires all carriers in the relevant area of the correctional facility to execute a lease with the CIS provider, not only large carriers that have commented in this proceeding, but also smaller carriers that have not.<sup>206</sup> Even if the major CMRS licensees negotiate expeditiously and in good faith, if one CMRS licensee in the area fails to engage in lease negotiations in a reasonable time frame or at all, the CIS solution will not be effective. Therefore, while some carriers have been cooperative,<sup>207</sup> it is imperative that all CMRS licensees be required to engage in lease negotiations in good faith and in a timely fashion. We agree with Tecore that at least some baseline requirements should be in place to ensure that lease agreements with reasonable terms can be executed with all area carriers in a reasonable timeframe.<sup>208</sup> Therefore, we adopt a rule requiring that CMRS licensees negotiate in good faith with entities seeking to deploy a CIS in a correctional facility.<sup>209</sup> Upon receipt of a good faith request by an entity seeking to deploy a CIS in a correctional facility, a CMRS licensee must negotiate in good faith toward a lease agreement. If, after a 45 day period, there is no agreement, CIS providers seeking STA to operate in the absence of CMRS licensee consent may file a request for STA with the WTB, with a copy served at the same time on the CMRS licensee, accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The CMRS licensee will then be given five days in which to respond. If WTB then determines that the leasing parties have not negotiated in good faith, WTB may issue STA to the entity seeking to deploy the CIS, notwithstanding lack of accompanying CMRS licensee consent. WTB will consider evidence of good faith negotiations on a case-by-case basis.<sup>210</sup> In comparable contexts, the Commission has provided examples of factors to be considered when determining whether there is good faith.<sup>211</sup> Here, such factors might also include whether the parties entered into timely discussions while providing appropriate points of contact, whether a model lease with reasonable terms was offered, etc. Further, the Commission may take additional steps as necessary to authorize CIS operations should we determine there is continued lack of good faith negotiations toward a CIS lease agreement.

63. We recognize that, to date, cooperation has largely existed among a majority of CMRS licensees and CIS providers in obtaining authorizations for CIS deployment. However, we reiterate that lack of cooperation of even a single wireless provider in a geographic area of a correctional facility can result in deployment of a system with insufficient spectral coverage, subject to abuse by inmates in possession of contraband wireless devices operating on frequencies not covered by a lease agreement.

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<sup>206</sup> See MSS Comments at 24-26.

<sup>207</sup> See Tecore Comments at 15.

<sup>208</sup> *Id.* at 10.

<sup>209</sup> See Appendix A.

<sup>210</sup> See *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15077-78 at para. 202 (2004) (establishing the good faith requirement of Section 90.677 of the Commission's rules, "there is no 'one size fits all' rule that can be applied to the good faith issue, which is largely fact-dependent and likely to vary from case-to-case").

<sup>211</sup> See, e.g., 47 CFR § 90.677(c) (for mandatory relocation negotiations, factors relevant to a good faith determination include: whether the party has made a bona fide offer to relocate the incumbent to comparable facilities, the steps the parties have taken to determine the actual costs of relocation, and whether either part has unreasonably withheld information requested by the other party that is essential to accurate estimations of costs and procedures); 47 CFR § 76.65(b) (violations of the duty to negotiate in good faith may include: refusal by an entity to negotiate, refusal to designate a representative with authority to make binding representations, acting in a manner that unreasonably delays negotiations, refusal to put forth more than a single, unilateral proposal, and failure to respond to a proposal).

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We do not believe that adopting this minimal requirement is unduly burdensome, but rather ensures that the public interest is served through deployment of robust CISs less subject to circumvention. We encourage all CMRS licensees to actively cooperate with CIS providers to simplify and standardize lease agreements and the negotiation process as much as possible and pursuant to reasonableness standards, and we commend carriers that have developed template lease agreements for CIS deployment.<sup>212</sup> ShawnTech supports the current process of managed access providers working closely with the carriers to develop closer and more successful working relationships in order to properly implement managed access technology.<sup>213</sup> We support the establishment of “best practices” with regard to CIS lease terms and conditions, but we intend to continue monitoring the CIS leasing process and may take additional action if needed.

64. *FCC Authorization of MAS.* In its comments, Boeing argues that spectrum leases are unnecessary for MAS and that the Commission should permit the operation of MASs in correctional facilities without spectrum lease agreements or carrier consent.<sup>214</sup> To support its argument for “direct licensing,” Boeing explains that the Commission has authority to authorize wireless operations on a secondary basis in the public interest which, in this case, is the need to neutralize contraband wireless devices in correctional facilities.<sup>215</sup>

65. The carriers strongly oppose this proposal and consider it without merit and irrelevant,<sup>216</sup> arguing that there is no basis for the Commission to adopt a different licensing model where there is no evidence that the current leasing process has failed to result in successful implementation of MAS.<sup>217</sup> Given the Commission’s proposals to streamline the leasing process and the significant benefits of carrier involvement in order to conduct necessary technical review and coordination, the carriers strongly oppose Boeing’s proposal as an unnecessary intrusion on licensees’ exclusive-use spectrum rights.<sup>218</sup>

66. As a general matter, we agree that carrier participation in the spectrum leasing process contributes significantly to the successful implementation of a CIS. One benefit of carrier involvement in CIS deployment is coordination and involvement in the process of testing CIS accuracy. As discussed in more detail below, the CMRS licensees will have the important role of notifying CIS operators in advance of adding spectrum bands or deploying a new air interface technology, thereby affecting the effectiveness of the CISs.<sup>219</sup> We believe that our adoption of streamlined spectrum leasing rules for CISs in correctional facilities, with the involvement and cooperation among the CMRS licensees and the CIS operators, will contribute greatly to the successful deployment of CISs and the effort to combat the contraband wireless device problem. We find it unnecessary at this time to adopt a “direct licensing” approach to CISs without spectrum lease agreements or carrier consent.

67. *“Lead Application” Proposal.* Taking the Commission’s proposals to streamline the spectrum leasing process for MAS a step further, AT&T puts forward its “lead” application proposal

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<sup>212</sup> See, e.g., Verizon Reply at 6.

<sup>213</sup> ShawnTech Comments at 5.

<sup>214</sup> Boeing Comments at 5.

<sup>215</sup> *Id.* at 5-9.

<sup>216</sup> See, e.g., AT&T Reply at 3-4.

<sup>217</sup> Verizon Reply at 4; CTIA Reply at 9. In fact, Boeing admits that it “has not seen evidence” of carriers refusing or limiting spectrum access to managed access providers or complaints about lease terms and conditions. See Boeing Comments at 3-4.

<sup>218</sup> AT&T Reply at 3-4; Verizon Reply at 4-5; CTIA Reply at 8-9.

<sup>219</sup> See *infra* paras. 75-77.

(continued....)

whereby the first lease entered into between a CMRS carrier and a certain MAS provider becomes the “lead” application and, once approved, the carrier would only be required to amend that lease to add any new call signs, coordinates for the new license area, and any other required data, for subsequent leases with the same MAS provider.<sup>220</sup> AT&T claims that this process would not only conserve time, effort, and expense when a carrier enters into an identical lease with a certain MAS provider multiple times in different locations, but also continue to provide the information the Commission needs in order to track the leases.<sup>221</sup> Verizon suggests that AT&T’s proposal has “merit and could expedite the lease agreement process.”<sup>222</sup> However, Verizon recognizes that in order for the proposal to be successful, the Commission would have to not only amend ULS to enable carriers to modify FCC Form 608 subsequent to lease approval, but also account for the fact that the carrier’s licensee at one location may be different in name from the entity licensed in another location.<sup>223</sup>

68. Through today’s adoption of streamlined rules providing for immediate processing of spectrum leasing applications for CISs in correctional facilities, we substantially achieve the benefits AT&T seeks through its “lead” application proposal, without requiring either far-reaching revisions to our long-standing secondary markets rules or, as Verizon suggests, additional costly FCC Form and ULS system changes.<sup>224</sup> For example, with our streamlined processing rule changes, AT&T will be able to seek immediate Commission approval for CIS spectrum leases by providing virtually the identical information in a lease that it would include in each and every amendment to a previously approved “lead application,” e.g., the coordinates of the added facility and call sign identifying the relevant leased spectrum. We note that our rules do not prevent a wireless provider from entering into contracts with CIS operators to account for future proposed operation in multiple states, and then filing spectrum leasing applications with the Commission with the basic identifying information, tantamount to the requested filing of an “amendment,” when deployment is contemplated. We believe that the rules adopted in this Order to streamline the leasing process for CISs strike the appropriate balance between removing regulatory burdens and maintaining the required Commission oversight of these leases to ensure compliance with the Communications Act and our rules. We believe that our existing licensing and leasing procedures, as streamlined herein, will greatly facilitate stakeholder efforts to expedite the deployment of CISs in correctional facilities.

#### **F. Notifications**

69. *Notification to Households and Businesses in Vicinity of Correctional Facilities.* In connection with streamlining the managed access spectrum lease notification and application process, the Commission sought comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility at which a MAS is installed,<sup>225</sup> as well as associated details and costs of any such notification.<sup>226</sup> The record reflects a mixed reaction, even among managed access operators.<sup>227</sup>

70. AT&T strongly supports giving notice to the surrounding community to inform users of

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<sup>220</sup> AT&T Comments at 5.

<sup>221</sup> *Id.*

<sup>222</sup> Verizon Reply at 3.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Notice*, 28 FCC Rcd at 6624, para. 44.

<sup>226</sup> *Id.*

<sup>227</sup> *See, e.g.*, Tecore Comments at 26; ShawnTech Comments at 3-4.

(continued....)

the potential for accidental call blocking.<sup>228</sup> One managed access operator, Tecore, agrees that the Commission should require notification of the households and businesses in the general vicinity of a correctional facility where a MAS is in place.<sup>229</sup> Tecore supports this recommendation by reasoning that the public should be aware of a MAS because they are a measure of national security, and further, the notification can serve to “limit the liability of the carriers, the institutions, and the managed access operators with the general public.”<sup>230</sup> Tecore suggests a standard method of notification such as a website posting, public notice in a common area, or signs on the grounds, and cautions the Commission against any specific notification requirements that may be burdensome or counterproductive.<sup>231</sup> The Florida Department of Corrections specifically supports required notification, with the burden for notification on the facility, the managed access provider, and local carriers.<sup>232</sup>

71. In the same vein, NENA: The 9-1-1 Association, believes that managed access operators should be required to undertake “extensive public education campaigns” directed toward businesses and households regarding the potential for call blocking at the borders of the systems’ service areas before the systems become operational.<sup>233</sup> The campaign would include mailings, door-hangers, and media campaigns.<sup>234</sup> Similarly, AICC suggests not only that households and businesses located within a reasonable proximity to the correctional facility be provided prior written notice (as well as annual notifications), but also that the alarm industry and local alarm companies should receive prior written notice before a MAS is tested or put into service.<sup>235</sup>

72. On the other hand, some managed access providers contend that the notification requirement is unnecessary. ShawnTech does not support a notification requirement, stating that: “To date we have not had any issues with our secure private coverage area exceeding beyond the correctional facilities’ secure fenced area.”<sup>236</sup> ShawnTech suggests that, in the unlikely event that there is an issue that could affect the local businesses or households, the parties involved will collaboratively agree on a course of action to remedy the situation.<sup>237</sup> Similarly, CellBlox believes that a notification requirement is unnecessary and places an undue burden on the managed access provider because properly regulated systems do not “bleed over” into the community.<sup>238</sup> Boeing recommends that the Commission refrain from adopting any community notification requirements because they are unnecessary given the technical and procedural requirements already in place.<sup>239</sup> Boeing explains that such notification requirements would unnecessarily establish additional barriers of cost and will delay the deployment of MAS systems without benefit, because there is no evidence of a substantial risk of misidentification of legitimate

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<sup>228</sup> AT&T Comments at 3, n.3.

<sup>229</sup> Tecore Comments at 26.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> FDOC Comments at 1.

<sup>233</sup> NENA Comments at 1.

<sup>234</sup> *Id.*

<sup>235</sup> AICC Comments at 6-8.

<sup>236</sup> ShawnTech Comments at 3.

<sup>237</sup> *Id.* at 3-4.

<sup>238</sup> CellBlox Comments at 2.

<sup>239</sup> Boeing Reply at 9.

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devices.<sup>240</sup>

73. We do not believe the record supports adoption at this time of a requirement that CIS operators notify houses and businesses in the areas surrounding correctional facilities where CISs are deployed. Because the record does not include material evidence of adverse effects of CIS deployment on the communities surrounding correctional facilities resulting from the operation of CISs, we find that there is not sufficient justification for imposing a potentially costly notification requirement. A goal of this proceeding is to expedite the deployment of technological solutions to combat the use of contraband wireless devices, not to impose unnecessary barriers to CIS deployment. While we do not anticipate a material risk to houses and businesses in the surrounding communities through CIS deployment, we will monitor CIS deployment and take additional steps on the notification issue if necessary in the public interest.

74. We remind licensees that the operation of a CIS is limited to the specific lease parameters as detailed in the applicable spectrum lease authorization and that we will strictly enforce any violation of the Commission's interference protection rules as they apply to the area in the vicinity of the correctional facility. If a system is deployed at a correctional facility in a geographic area particularly susceptible to potential interference around the boundaries of the facility, we encourage CIS operators to consider notifying surrounding households and businesses through a reasonable means.

75. *Notification to CIS Operators of Carrier Technical Changes.* In the *Notice*, the Commission sought comment generally on proposals submitted by interested parties regarding rule changes intended to expedite the deployment of MASs, including GTL's proposal to impose network upgrade notification obligations on carriers.<sup>241</sup> In its original petition, GTL requested that the Commission adopt rules that require CMRS providers to notify MAS operators or prison administrators in advance of any network changes likely to impact the MAS and negotiate in good faith on the implementation timing of the change.<sup>242</sup> The reason for the requirement, GTL explained, is that "rapid technological evolution" impacts the effectiveness of a MAS and could render them ineffective; for example, network changes such as changing power levels or antenna patterns could impact proper operation of the system.<sup>243</sup> In its comments, ACA supports this notification requirement.<sup>244</sup>

76. After careful consideration of the record, we believe that successful operation of a CIS installed in a correctional facility requires close cooperation among the CIS operator, the correctional facility, and the CMRS licensees on whose spectrum the systems are operating. We recognize that, as carriers' networks evolve to 5G and beyond, new frequency bands will be made available for commercial use with new protocols, and that network changes or updates can have a significant impact on the effectiveness of the CIS. Tecore has highlighted the importance of communicating with the carriers regarding changes in technologies and the need to modify MAS deployments to respond to those changes, which occur "frequently."<sup>245</sup> GTL has also reiterated the challenges it faces in keeping pace with the software changes required to respond to "rapidly changing wireless technology."<sup>246</sup> GTL suggests that policies must ensure that wireless carriers are "active participants" in the effort to eliminate contraband

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<sup>240</sup> *Id.*

<sup>241</sup> *See Notice*, 28 FCC Rcd at 6627-28, para. 52, n.165, citing GTL Petition at 9.

<sup>242</sup> GTL Petition at 12-13.

<sup>243</sup> *Id.*

<sup>244</sup> *See ACA Comments* at 3.

<sup>245</sup> *See Tecore 2015 Ex Parte* at 1.

<sup>246</sup> Letter from Cherie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC (Apr. 21, 2016).

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cellphone use.<sup>247</sup>

77. In its comments, MSS suggests that effective implementation of MAS requires mandatory coordination of network changes with the MAS operator.<sup>248</sup> As an example, MSS cites the impact of a technical change such as a switch from 3G to 4G at a given base station for a given band.<sup>249</sup> At the same time, MSS notes the possibility that carriers may find the coordination of network changes with MAS operators burdensome.<sup>250</sup> The record does not include comment from CMRS licensees regarding such a notification rule. We agree that the effectiveness of CIS systems depends on coordination between CMRS licensees and CIS operators, yet we acknowledge that any carrier notification requirement must not be overly burdensome or costly. In this Order, we strike a balance by adopting a rule requiring that CMRS licensees that are parties to lease arrangements for CISs in correctional facilities must provide written notification (e.g., e-mail or facsimile) to the CIS operator no later than 90 days in advance of adding new frequency band(s) to their service offerings or deploying a new air interface technology (e.g., a carrier that previously offered CDMA deploying LTE), unless a different timeframe is agreed to by both parties, so that CISs can be timely upgraded to prevent spectrum gaps in the system that could be exploited by users of contraband wireless devices in correctional facilities.<sup>251</sup> In weighing the potential costs and public interest benefits of this requirement, we agree with commenters that effective implementation of CISs requires mandatory coordination of basic network changes.<sup>252</sup> We decline to adopt further notification requirements at this time. However, in the Further Notice, we seek comment on whether it is necessary in the public interest to broaden the scope of this notification requirement from CMRS licensees to CIS operators to include, for example, network changes (e.g., transmitter power or antenna modifications) that may impact successful operation of a CIS.<sup>253</sup>

#### **G. Cost-Benefit Analysis**

78. In the *Notice*, the Commission acknowledged that spectrum leasing, STA, and other rules and processes related to the deployment of MASs could be time-consuming and cumbersome and sought specific comment on the costs and benefits of proposals to streamline those rules and procedures.<sup>254</sup> After careful consideration of the record, we believe that the rules we adopt in this Order will significantly reduce the time and resources needed to complete spectrum leases for CISs and speed the adoption and deployment of such systems in correctional facilities. More rapid adoption of CIS systems will increase public safety by reducing criminal activity coordinated in or through correctional facilities, while allowing such facilities to reduce the amount of staff time and resources dedicated to detecting and confiscating contraband cell phones.

79. The rules we adopt in this Order are designed to minimize costs while maximizing public benefits. The benefits of these rules are discussed at length throughout the Order. And for some of the rule changes, we anticipate that there will be little or no costs imposed on the public, given that the revisions are to make compliance easier. For instance, expediting processing of qualifying leases for CISs, exempting CIS providers seeking an STA from the requirement that they file the application ten days prior to operation, and waiving our rules to eliminate certain CIS operator filings regarding

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<sup>247</sup> *Id.* at 2.

<sup>248</sup> *See* MSS Comments at 24, 31.

<sup>249</sup> *Id.* at 26.

<sup>250</sup> *Id.* at 31.

<sup>251</sup> *See* Appendix A.

<sup>252</sup> *See, e.g.*, MSS Comments at 26.

<sup>253</sup> *See infra* para. 122.

<sup>254</sup> *See Notice*, 28 FCC Rcd at 6617, para. 24.



regulatory status changes will all significantly reduce regulatory compliance costs while speeding up CIS deployment. To the extent that these revisions might impose costs on taxpayers, we have minimized those costs as well. For instance, rather than making costly changes to Form 601, Form 608, or ULS, we instead will implement a manual processing system that can be in place more quickly, and with minimal impact on Commission resources. We have also considered the burdens of our proposals in, for instance, rejecting a requirement for CIS operators to notify houses and businesses in the areas surrounding correctional facilities where CISs are deployed, because we have found insufficient justification for imposing a potentially costly notification requirement.

80. At the same time, however, we acknowledge that some of the rule changes we make here will impose some costs on wireless providers. In particular, the requirements regarding 911 calls, negotiation in good faith, and notification to CIS providers of network changes will require some effort and resources. In the *Notice*, the Commission specifically asked for comment on the costs and benefits of all of the proposals presented, requesting that commenters provide specific data, such as actual or estimated dollar figures, for each proposal.<sup>255</sup> Commenters did not, however, provide any detailed or concrete cost estimates, and therefore we must rely to some extent here on our general understanding and prediction of likely costs in making this cost-benefit assessment. We anticipate that adopting a rule to require that CIS providers operating as PMRS route 911 calls to PSAPs, unless PSAPs do not wish to receive 911 calls from a specific correctional facility, is likely to impose minimal costs. It is our understanding that pass through capability already generally exists in CISs, and we note that such requirements are already reflected in many leasing arrangements. We therefore believe that the public benefits of this requirement will exceed compliance costs. Requiring CMRS licensees to negotiate in good faith with entities seeking to deploy a CIS will impose only the cost of conducting negotiations, and given that a carrier's leasing terms may well become standardized fairly quickly, this burden seems minimal. In any event, because the lack of cooperation of even one wireless provider can seriously degrade the effectiveness of a CIS, we conclude that the small cost of negotiating will be easily outweighed by the public benefit of ensuring that CISs can be put into place. Similarly, we conclude that the requirement that CMRS licensees provide notice to the CIS operator of basic network changes strikes a reasonable balance between minimizing costs for carriers and reducing the likelihood of exploitable spectrum gaps in deployed CISs.

#### **H. Ombudsperson**

81. In order to assist CIS operators and CMRS licensees in complying with their regulatory obligations, we intend to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson's duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, resolving issues that may arise during the leasing process and potentially transmitting qualifying request for disabling to wireless providers. The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities. With this appointment, we ensure continued focus on this important public safety issue and solidify our commitment to combating the problem. We direct the WTB to release a public notice within one week of adoption of this Order naming the ombudsperson and providing contact information.

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<sup>255</sup> See *id.* at 6617, paras. 24, 25; 6621, para. 36; 6622, para. 39; 6623, para. 41; 6624, para. 44; 6624-25, para. 45; 6625, para. 46; 6627, para. 51; 6629, para. 55; 6630, paras. 56, 59; 6632, para. 64; 6633, para. 68; 6634, para. 70; 6636, para. 77.

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#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

##### I. Disabling Contraband Wireless Devices in Correctional Facilities

82. *Background.* Historically, detection systems in correctional facilities have been passive, receive-only and identify the location of contraband wireless devices through triangulation without transmitting radio signals, and therefore do not require specific Commission operating authority.<sup>256</sup> Passive detection systems simply approximate the location of the contraband device, and correctional facility employees must search for and confiscate the devices, which can endanger the employees' safety.<sup>257</sup> In September 2011, CellAntenna filed a petition for rule changes that would require wireless carriers to terminate service to contraband wireless devices identified by a detection system.<sup>258</sup>

83. In the *Notice*, the Commission proposed to require CMRS licensees to terminate service to detected contraband wireless devices within correctional facilities pursuant to a qualifying request from an authorized party and sought comment on CellAntenna's detection and termination proposal<sup>259</sup> and any other proposals that would facilitate the deployment of traditional detection systems.<sup>260</sup> The Commission explained that detection-based interdiction is significantly more effective when combined with carrier termination of service to detected contraband devices by all wireless licensees covering a given correctional facility.<sup>261</sup> Importantly, in order for detection and termination to be effective, all carriers covering the relevant facility must terminate service or else inmates will simply turn to using contraband devices that can receive service from the wireless provider(s) that do not participate.<sup>262</sup> The Commission sought comment on the proposed detection and termination approach as well as the Commission's belief that it has authority pursuant to Section 303 of the Act to require CMRS carriers to terminate service to contraband wireless devices.<sup>263</sup> Additionally, the Commission asked about the possible effectiveness of voluntary carrier participation in an industry wide effort to terminate service to contraband wireless devices.<sup>264</sup>

84. More specifically, the Commission sought comment on each of the steps involved in the process of terminating service to contraband wireless devices, including the information that the correctional facility must transmit to the provider to effectuate termination, the timing for carrier termination, the method of authenticating a termination request, and other issues.<sup>265</sup> CellAntenna has proposed a termination process that includes minimum standards for detection equipment, the form of notice to the carrier, and a carrier response process that consists of a set of deadlines for responding, based on the volume of reports or inquiries the carrier receives concerning contraband wireless devices.<sup>266</sup> Under this "staged" response obligation, the carriers would have a longer time to respond if they receive a

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<sup>256</sup> *Id.* at 6628, para. 53.

<sup>257</sup> *Id.*

<sup>258</sup> *See* CellAntenna 2011 Petition at 8.

<sup>259</sup> *Notice*, 28 FCC Rcd at 6628, para. 53.

<sup>260</sup> *Id.* at 6629, para. 56.

<sup>261</sup> *Id.* at 6629-30, para. 58.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 6630-31, para. 60; *see* 47 U.S.C. § 303.

<sup>264</sup> *Notice*, 28 FCC Rcd at 6629-30, para. 58.

<sup>265</sup> *Id.* at 6630, para. 59.

<sup>266</sup> CellAntenna Reply at 8-10.

(continued....)

large number of requests, ranging from one hour to 24 hours after receipt of notice.<sup>267</sup> CellAntenna encourages the Commission to determine a “reasonable” time frame for service suspension.<sup>268</sup>

85. Commenting parties focused substantially on the issue of liability associated with termination, and their alternative proposal that termination should be required only pursuant to a court order. Wireless carriers expressed concern that the proposed termination process would require carriers to investigate requests and risk erroneous termination, which could endanger safety and create potential liability.<sup>269</sup> Instead, the carriers argue, the Commission should amend its proposed termination rules to require that requests to terminate be executed pursuant to an order from a court of relevant jurisdiction.<sup>270</sup> Other commenters, however, reject the notion that court-ordered termination is necessary in order to protect carriers from liability in the event of erroneous termination, and argue that the Commission’s role in managing the public’s use of spectrum empowers it to require carriers to terminate service to unlawful devices, irrespective of whether the request is made by the FCC, a court order, or upon the request of an authorized prison official.<sup>271</sup>

86. *Discussion.* We propose and seek further comment on, as discussed below, a Commission rule-based process requiring the disabling of contraband wireless devices where certain criteria are met, including a determination of system eligibility and a validation process for qualifying requests designed to address many wireless provider concerns. We clarify that the proposed process would involve participation by stakeholders to effectively implement the Commission’s directive to disable such devices, and in no way represents a delegation of authority to others to compel such disabling. We recognize that wireless providers favor a court-ordered termination process as an alternative, but we believe that requiring court orders would be unnecessarily burdensome and that Commission rule-directed disabling should be sufficient to address concerns about liability. Based on the comments filed in the record, moreover, it is far from clear that a CMRS provider that terminates service to a particular device based on a qualifying request would be exposed to any form of liability. Indeed, we welcome comment from CMRS providers on the scope of their existing authority under their contracts and terms of service with consumers to terminate service. Commenters who agree with the view that a court-ordered approach is preferable should specifically address why termination pursuant to a federal requirement, i.e., Commission directive, does not address liability concerns as well as termination pursuant to court order. We note that the current record does not sufficiently demonstrate that reliance on the wireless providers’ alternative court-ordered approach in lieu of the proposed rule-based approach discussed below would achieve one of the Commission’s overall goals in this proceeding of facilitating a comprehensive, nationwide solution. We also note that the record does not reflect persuasive evidence of successful voluntary termination of service to contraband wireless devices in correctional facilities by the CMRS licensees,<sup>272</sup> even where there is evidence of a growing problem.<sup>273</sup>

87. To the extent commenters continue to support a court-ordered approach, we seek specific comment on the particulars of the requested court-ordered process to evaluate and compare it to our

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at n.12.

<sup>269</sup> AT&T December *Ex Parte* at 7; Verizon Comments at 8-9; CTIA Comments at 9.

<sup>270</sup> AT&T December *Ex Parte* at 7; Verizon Comments at 8; CTIA Comments at 12.

<sup>271</sup> Boeing Reply at 5-6; Triple Dragon Reply at 4-8.

<sup>272</sup> See Letter from Marjorie K. Conner, counsel to CellAntenna, to Marlene H. Dortch, Secretary, FCC (May 29, 2014); Letter from Marjorie K. Conner, counsel to CellAntenna, to Marlene H. Dortch, Secretary, FCC (Oct. 9, 2014). These letters indicate that not all the carriers have been cooperative in efforts to terminate service to contraband devices.

<sup>273</sup> See *ACA Ex Parte*.

proposal: who is qualified to seek a court order and with what specific information or evidence? To whom is the request submitted and how is the court order implemented? How can existing processes carriers use for addressing law enforcement requests/subpoenas apply in the contraband wireless device context? Does the success of a court-ordered process depend on the extent to which a particular state has criminalized wireless device use in correctional facilities? Additionally, given the acknowledged nationwide scope and growth of the contraband wireless device problem, how would CIS and wireless providers navigate the myriad fora through which requests for termination might flow, potentially requiring engagement with a wide variety of state or federal district attorneys' offices; federal, state or county courts; or local magistrates? In this regard, we seek examples of successfully issued and implemented court orders terminating service to contraband wireless devices, as well as demonstrations that court orders can be effective at scale and not overly burdensome or time-consuming to obtain and effectuate in this context.

88. *Commission Authority.* In the *Notice*, the Commission stated its belief that the Commission has authority under Section 303 to require CMRS licensees to terminate service to contraband wireless devices.<sup>274</sup> AT&T recognizes the Commission's authority pursuant to Section 303 to require termination, but argues that deactivation must be ordered by "a court or the FCC" because the Commission "cannot lawfully delegate its statutory authority to a third party," such as a state corrections officer.<sup>275</sup> In response, Boeing and Triple Dragon reject AT&T's position, arguing that the proposed termination process does not raise any issues of delegation, as the Commission has clear authority to require carriers to terminate service to unauthorized devices upon receiving a Commission-mandated qualifying request.<sup>276</sup> We believe that Section 303 provides the Commission authority to adopt rules requiring CMRS carriers to disable contraband wireless devices as discussed in detail below.<sup>277</sup> Pursuant to Section 303(b), the Commission is required to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class."<sup>278</sup> Additionally, Section 303(d) requires the Commission to "[d]etermine the location of classes of stations or individual stations,"<sup>279</sup> and Section 303(h) grants the Commission the "authority to establish areas or zones to be served by any station."<sup>280</sup> When tied together with Section 303(r), which requires the Commission to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter,"<sup>281</sup> we believe that these provisions empower the Commission to implement this proposal.

89. The Supreme Court has long recognized that Title III grants the Commission "expansive powers" and a "comprehensive mandate" to regulate the use of spectrum in the public interest.<sup>282</sup> In

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<sup>274</sup> *Notice*, 28 FCC Rcd at 6630-31, para. 60.

<sup>275</sup> AT&T Comments at 3, 8.

<sup>276</sup> Boeing Reply at 6; Triple Dragon Reply at 4 (arguing the Commission's proposed process authority "does not touch upon the matter of delegation; the carrier is required to act upon the request of an authorized prison official").

<sup>277</sup> See 47 U.S.C. § 303; see also § 154(i).

<sup>278</sup> 47 U.S.C. § 303(b); see also *Cellco Partnership v. FCC*, 700 F.3d 534, 542-43 (D. C. Cir. 2012) (upholding Commission's roaming rules for mobile data providers, broadly reading phrase "prescribe the nature of the service to be rendered" to mean "lay[ ] down a rule about 'the nature of the service to be rendered'").

<sup>279</sup> 47 U.S.C. § 303(d).

<sup>280</sup> *Id.* § 303(h).

<sup>281</sup> *Id.* § 303(r).

<sup>282</sup> *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943) (recognizing the FCC's "expansive powers" and "comprehensive mandate"); see also *Reexamination of Roaming Obligations of Commercial Mobile Radio Service*

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*Cellco*, the D.C. Circuit addressed the scope of Title III and explained that Title III confers on the Commission “broad authority to manage spectrum . . . in the public interest.”<sup>283</sup> We believe that the record demonstrates that combatting contraband wireless device use in correctional facilities has clear public safety implications and is within the Commission’s purview to regulate.

90. Further, with respect to wireless carrier arguments that any proposal for requests by departments of corrections based on CIS-collected data seeking disabling of contraband wireless devices is an unlawful delegation of authority, we clarify that any such request would be pursuant to an adopted Commission rule mandating disabling where certain criteria are met. Such criteria, as discussed in detail below, include various factors involving the deployment of CIS technologies. We therefore believe that the proposed rules requiring carriers to disable a device upon receiving a qualifying request is not an unlawful delegation of the Commission’s statutory authority to a third party. The Commission’s authority under Section 303 to regulate the use of spectrum in the public interest necessarily includes the authority to promulgate rules requiring regulated entities to terminate unlawful use of spectrum where certain indicia are met. The rules we propose here, as described below, involve a process by which carriers would be required to disable contraband devices identified through CIS systems deemed eligible by the Commission. The Commission would not be delegating decision-making authority regarding the disabling of contraband wireless devices,<sup>284</sup> and we therefore believe the Commission has the authority to propose the rules discussed below.

91. *Disabling of Contraband Wireless Devices in Correctional Facilities.* We propose rules in this Further Notice mandating that CMRS licensees disable contraband wireless devices in correctional facilities detected by an eligible CIS when they receive a qualifying request from an authorized party.<sup>285</sup> Our proposals address CIS eligibility, what constitutes a qualifying request, and specifics regarding the carrier disabling process. We seek comment on these more detailed proposals that clarify, and expand on, the Commission’s *Notice* proposals. Our proposed rules for disabling contraband devices in correctional facilities apply to devices detected by CISs that meet our minimum criteria to be an eligible CIS. We clarify that CIS systems operating solely to prevent calls and other communications from contraband wireless devices, described in the *Notice* as MASs, will not be subject to these eligibility criteria, unless the department of corrections/CIS provider seeks to use the information received from such a system to request, through Commission rules, contraband wireless device disabling.

92. In the *Notice*, the Commission proposed to require CMRS licensees to terminate service to contraband devices within correctional facilities pursuant to a qualifying request from an authorized party, consistent with CellAntenna’s proposal.<sup>286</sup> The Commission sought comment on the specific information that the correctional facility must transmit to the provider to effectuate termination, timing for carrier termination, methods of authenticating a termination request, and other issues.<sup>287</sup> Specifically, the Commission sought comment on the appropriate criteria that must be met by an entity requesting

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*Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5439-5443 (paras. 61-64) (2011) (discussing the scope of the FCC’s Title III authority), *petition for review denied Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012) (upholding the FCC’s authority to rely on Title III provisions to impose data roaming rule) (*Cellco*).

<sup>283</sup> *Cellco*, 700 F.3d at 541.

<sup>284</sup> See *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004) (distinguishing subdelegation of decision-making authority from legitimate types of outside party input into agency actions, such as “establishing a reasonable condition for granting federal approval,” “fact gathering,” and “advice giving”).

<sup>285</sup> See Appendix B.

<sup>286</sup> See *Notice*, 28 FCC Rcd at 6629-35, paras. 56-73.

<sup>287</sup> See *id.*

(continued....)

termination of a device identified by a detection system, and whether the Commission should establish minimum performance standards for detection systems or impose technical accuracy standards through the equipment certification process.<sup>288</sup> In addition, the Commission sought comment on the exact details of the process by which termination requests are initiated, transmitted to, and received by the carriers.<sup>289</sup> Finally, the Commission sought comment on the process that the carriers would need to implement in order to terminate service to unauthorized devices.<sup>290</sup>

93. Numerous individual state departments of corrections support the Commission's proposal to mandate termination of service to contraband wireless devices.<sup>291</sup> For example, the Chief Information Officer of the Texas Department of Criminal Justice encourages implementation of a termination of service process, including criteria establishing a maximum allowable time limit for termination of service upon proper notification by an authorized correctional official.<sup>292</sup> The Minnesota Department of Corrections supports a nationally standardized protocol for identifying contraband wireless devices and notification to the carrier.<sup>293</sup> The Florida Department of Corrections also supports the standardization of information required to be provided by correctional facilities to service providers for termination of service and of the method of submission of information.<sup>294</sup> The Mississippi Department of Corrections supports a Commission mandate to terminate service to contraband wireless devices, noting that it has made efforts to terminate service by seeking court orders with the cooperation of some wireless providers, that not all providers have been cooperative, and that a Commission rule would save time and resources used in obtaining a court order.<sup>295</sup>

94. Several commenters express concern regarding the validation process and accuracy of termination information relayed to the carriers to implement termination of service to contraband wireless devices in correctional facilities. The carriers assert that the record simply does not contain sufficient information to define a process for termination at this time. AT&T suggests that there must be a validation process whereby carriers have the opportunity to confirm the accuracy of the termination information.<sup>296</sup> AT&T is concerned that if there is not an FCC or court order compelling termination, the carrier bears the responsibility for deciding whether to terminate service to a particular device.<sup>297</sup> Verizon also expresses significant concern regarding the dearth of carrier experience with handling termination requests.<sup>298</sup> Verizon contends that carriers have material concerns regarding the ability of detection systems to accurately identify contraband devices, the security and authenticity of the termination

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<sup>288</sup> *Id.* at 6631-32, paras. 61-64.

<sup>289</sup> *Id.* at 6632-34, paras. 65-69.

<sup>290</sup> *Id.* at 6634-35, paras. 70-73.

<sup>291</sup> *See, e.g.*, CDCR Comments at 4; DDOC Comments at 2; FDOC Comments at 2; IDOC Comments at 2; MNDOC Comments at 1; MSDOC Comments at 1-2.

<sup>292</sup> Comments of Michael D. Bell, Chief Information Officer, Texas Department of Criminal Justice, at 1.

<sup>293</sup> MNDOC Comments at 1.

<sup>294</sup> FDOC Comments at 2. FDOC supports a one hour time frame for carriers to terminate service unless there is a life safety issue that would justify immediate termination. *Id.*

<sup>295</sup> MSDOC Comments at 1-2.

<sup>296</sup> AT&T Reply at 5.

<sup>297</sup> AT&T Comments at 7.

<sup>298</sup> Verizon Comments at 5-9.

(continued....)

requests being transmitted to carriers, and the potential liability of carriers for erroneous termination.<sup>299</sup> Verizon believes that carriers require accurate information about the MIN and the device MDN,<sup>300</sup> and therefore the Commission should review and certify managed access and detection systems.<sup>301</sup> Verizon also recommends that termination requests be transmitted via secure transmission paths such as secure web portals that already exist to receive court-ordered termination requests.<sup>302</sup>

95. Furthermore, Verizon claims that, due to the lack of information in the record, it is impossible at this time to determine important details about termination requests, such as “how many entities will be making such requests, how frequently those requests will be made, and how many devices carriers will be asked to terminate in each request.”<sup>303</sup> As a result, Verizon states, carriers have no way of assessing the costs of processing termination requests or the systems that will have to be in place.<sup>304</sup> CTIA concurs that, in light of the “complexities” in the termination proposal, the Commission should certify detection systems and validate that a detection system is working properly and capturing accurate, necessary information regarding the unauthorized devices.<sup>305</sup> One managed access provider, CellBlox, opposes proposals to require termination of service to contraband wireless devices not only as unworkable and burdensome to correctional facilities, but also as raising too many unanswered questions regarding the specifics of the termination process.<sup>306</sup>

96. Tecore is a proponent of MASs as the preferred solution to the contraband problem, but is not opposed to detection and termination solutions used in conjunction with MAS, if the Commission establishes the specifics for a termination process.<sup>307</sup> To the extent that the Commission decides to mandate termination procedures, Tecore implores the Commission to define specific information that the correctional facility must transmit to the carrier in order to effectuate a termination, including device information, criteria for concluding that a device is contraband, a defined interface for accepting or rejecting a request, a defined timeframe, and procedures for protesting or reinstating an invalid termination.<sup>308</sup>

97. Triple Dragon supports Commission regulations governing the detection and termination of service to contraband wireless devices and urges the Commission to revise its rules to accommodate an equipment certification process for detection systems.<sup>309</sup> With regard to the timeframe for carriers to terminate service subsequent to a request, Triple Dragon suggests that immediate termination is necessary for public safety and that termination should be based on clear data indicating that the device is operating in violation of federal or state law or prison policy.<sup>310</sup> Boeing contends that performance standards or

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<sup>299</sup> Verizon Reply at 7.

<sup>300</sup> MIN is the mobile identification number and MDN is the mobile directory number. The MIN and the MDN are used by CDMA devices.

<sup>301</sup> Verizon Comments at 6-7.

<sup>302</sup> *Id.* at 7.

<sup>303</sup> *Id.* at 5-8.

<sup>304</sup> Verizon Reply at 7.

<sup>305</sup> CTIA Comments at 8.

<sup>306</sup> CellBlox Comments at 2.

<sup>307</sup> Tecore Comments at 18-24.

<sup>308</sup> *Id.* at 25-26.

<sup>309</sup> Triple Dragon Reply at 4-5.

<sup>310</sup> *Id.* at 5, 8.

(continued....)

additional technical requirements for passive detection systems are unnecessary and impractical.<sup>311</sup> Boeing highlights that, despite “numerous and lengthy trials of detection technology at various facilities around the country, there have been no reports of misidentification....”<sup>312</sup> Indeed, Boeing believes that there is a lack of evidence to warrant the imposition of technical requirements for detection systems, noting that the record does not show “an appreciable risk of misidentification, nor does it support the imposition of burdensome technical standards to address this hypothetical risk.”<sup>313</sup>

98. Other stakeholders encourage the Commission to foster the development of all solutions to combat contraband wireless devices in correctional facilities, including detection and termination. The supporters of termination include providers of inmate calling services. Securus recommends that the Commission “should not preclude any of these alternatives and should support the testing and implementation of all these options.”<sup>314</sup> Further, Securus suggests that the “FCC should take a firm stance that CMRS providers must cooperate with correctional facilities to quickly terminate service to detected contraband devices.”<sup>315</sup> GTL supports the Commission’s proposal to require wireless carriers to terminate service to contraband wireless devices, without the need for a court order.<sup>316</sup> GEO, a private manager and operator of correctional facilities, agrees with the Commission’s proposal to require carriers to terminate service to contraband wireless devices within one hour of receipt of notice from a qualifying authority.<sup>317</sup> GEO recommends a broad definition of “qualifying authority” that would include wardens of both private and public correctional facilities.<sup>318</sup> ACA urges the Commission to permit the corrections community to employ “every possible tool in the toolbox” to combat contraband wireless devices in correctional facilities, including immediate termination of service by carriers upon notification by any public safety agency pursuant to a standardized process.<sup>319</sup> Acknowledging the carriers’ concern about potential liability for erroneous termination, ACA suggests that the Commission adopt rules granting carriers protection while acting in good faith and for public safety to further protect the carriers above and beyond the language in the customer contracts.<sup>320</sup>

99. After careful consideration of the record, we propose in this Further Notice rules mandating that CMRS licensees disable contraband wireless devices in correctional facilities detected by an eligible CIS pursuant to a qualifying request that includes, *inter alia*, specific identifying information regarding the device and the correctional facility.<sup>321</sup> As discussed below, in proposing that a qualifying request must include unique device identifiers, we seek to ensure that the disabling process will completely disable the contraband device itself and render it unusable, not simply terminate service to the device as we had originally proposed in the *Notice*.<sup>322</sup> Our proposed process includes a required FCC

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<sup>311</sup> Boeing Comments at 13-15.

<sup>312</sup> *Id.* at 14.

<sup>313</sup> Boeing Reply at 8.

<sup>314</sup> Securus Comments at 6.

<sup>315</sup> *Id.* at 8.

<sup>316</sup> GTL Reply at 5.

<sup>317</sup> GEO Comments at 7-9.

<sup>318</sup> *Id.* at 9.

<sup>319</sup> ACA Reply at 2-3.

<sup>320</sup> *Id.* at 4.

<sup>321</sup> *See* Appendix B.

<sup>322</sup> *Notice*, 28 FCC Rcd at 6629, para. 56. We also seek comment herein on the 911 implications of our disabling proposal. *See infra* para. 108.



determination of eligibility of CISs to ensure the systems satisfy minimum performance standards, appropriate means of requesting the disabling, and specifics regarding the required carrier response. We seek specific comment on all aspects of the process as well as the costs and benefits of their implementation.

100. *Eligibility of CISs.* In proposing to mandate the disabling of contraband wireless devices in correctional facilities, we seek to ensure that the systems detecting contraband wireless devices first meet certain minimum performance standards in order to minimize the risk of disabling a non-contraband wireless device. We propose to determine in advance whether a CIS meets the threshold for eligibility to be the basis for a subsequent qualifying request for device disabling, which will facilitate contracts between stakeholders, for example departments of corrections and CIS providers, and appropriate spectrum leasing arrangements, typically between CIS providers and wireless providers. We envision that this eligibility determination would not at this stage assess the CIS's characteristics related to a specific deployment at a certain correctional facility, but rather a CIS's overall methodology for system design and data analysis that could be included in a qualifying request, where more specific requirements must be met for device disabling. We therefore propose that CIS operators seeking wireless provider disabling of contraband wireless devices in a correctional facility must first be deemed an eligible CIS by the Commission, and we intend to periodically issue public notices listing all eligible CISs. In order to be deemed eligible, a CIS operator must demonstrate the following: (1) all radio transmitters used as part of the CIS have appropriate equipment authorization pursuant to Commission rules; (2) the CIS is designed and will be configured to locate devices solely within a correctional facility,<sup>323</sup> can secure and protect the collected information, and is capable of being programmed not to interfere with emergency 911 calls; and (3) the methodology to be used in analyzing data collected by the CIS is sufficiently robust to provide a high degree of certainty that the particular wireless device subject to a later disabling request is in fact located within a correctional facility. We seek comment on the appropriate format for requesting eligibility, taking into consideration our goal of reducing burdens and increasing administrative efficiency.

101. Given the extensive CIS eligibility criteria, representing the initial requirement for making a qualifying request described in this proposal, we believe it is unlikely that any significant number of non-contraband devices will be erroneously detected and actually disabled. However, we seek further comment on the costs, benefits, and burdens to potential stakeholders of requiring CIS eligibility before qualifying disabling requests can be made to wireless providers. We believe that our proposed eligibility criteria adequately address concerns expressed in the record regarding improper functioning of CIS systems and inaccurately identifying contraband devices.<sup>324</sup> If commenters disagree, we seek comment on what additional eligibility criteria would ensure the accuracy and authenticity of CISs. For example, should we require testing or demonstrations at a specific correctional facility prior to making a CIS eligibility determination? If so, what type of tests would be appropriate? How should signals be measured and what criteria should be used to evaluate such tests? Importantly, should such a testing requirement be part of the initial eligibility assessment or should it part of what constitutes a qualifying request under our proposed rules? If testing were part of a general eligibility assessment, would such additional testing at a specific site be unduly burdensome or unnecessarily delay or undermine either state RFP processes or spectrum lease negotiations? Would parties enter into agreements and lease arrangements where a CIS had not yet been deemed eligible? Should we require that a CIS be able to identify the location of a wireless device to within a certain distance?<sup>325</sup> Is such an accuracy requirement

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<sup>323</sup> To comply with this criteria, a CIS operator may need to employ a range of mitigation techniques that might vary depending on the location of the correctional facility, as rural v. urban facilities differ substantially regarding their proximity to the general public.

<sup>324</sup> See Verizon Comments at 6-7; CTIA Comments at 8; Tecore Comments at 18-24; Triple Dragon Reply at 4-5.

<sup>325</sup> See *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259 (2015).

unnecessary or would it be beneficial in assessing the merits of a CIS design and reducing the risk of capturing non-contraband devices? Should any eligibility determination be subject to a temporal component, for example, requiring a representation on an annual basis that the basic system design and data analysis methodology have not materially changed, and should the CIS operator be required to provide the Commission with periodic updates on substantial system changes, upgrades or redesign of location technology? Should eligibility be contingent on the submission of periodic reports detailing any incidents during the applicable period where devices were erroneously disabled? Should the eligibility criteria be different depending on whether the facility is in a rural or urban area, or whether the CIS provider, the correctional facility, or the CMRS licensee is large or small? Commenters should be specific in justifying any proposed additional minimum standards for CIS eligibility, including the costs and benefits to stakeholders.

102. *Qualifying Request.* In addition to ensuring that CISs meet certain performance standards in order to minimize the risk of error, we also seek to ensure that an authorized party provides the information necessary for a wireless provider to disable contraband wireless devices. We propose to require that CMRS licensees comply with our proposed disabling process upon receipt of a qualifying request made in writing and transmitted via a verifiable transmission mechanism.<sup>326</sup> We seek comment on whether the qualifying request must be transmitted (1) by the Commission (including, potentially, by the contraband wireless device ombudsperson referenced above), upon the request of a Designated Correctional Facility Official (DCFO), which we propose to define as a state or local official responsible for the facility where the contraband device is located; or (2) by the DCFO. We acknowledge that a request transmitted directly from a DCFO to the CMRS licensee, after a CIS is deemed eligible and expressly pursuant to a Commission rule, may be made more timely and efficiently than a request transmitted from the DCFO to the Commission, and then to the CMRS licensee. We seek specific comment on our proposed definition of DCFO, as well as the costs and benefits of these two approaches to the transmission of the qualifying request, both in terms of timeliness and any perceived liability concerns.

103. We believe that carrier concerns about the authenticity of termination requests<sup>327</sup> are best addressed by requiring that a request to disable be initiated by a state or local official responsible for the correctional facility, who arguably has more responsibility and oversight in the procurement of a CIS for correctional facilities than a warden or other prison official or employee, as suggested in the record.<sup>328</sup> A review of our ULS and OET databases reflects that, to date, requests for Commission authorization of CISs have only been in state correctional facilities, but we seek to facilitate a wide range of deployments where possible to achieve a more nationwide solution, including within federal and/or local correctional facilities that may seek to deploy CIS. We also seek specific comment on the extent to which, as Verizon claims, carriers have existing secure electronic means used to receive court-ordered termination requests, which could be leveraged to transmit and receive disabling requests from correctional facilities that employ CISs.<sup>329</sup>

104. We propose that in order for the request to disable a contraband wireless device to be a qualifying request, the DCFO must make a number of certifications and include device and correctional facility information. Specifically, we propose that the DCFO must certify in the qualifying request that

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<sup>326</sup> A verifiable transmission mechanism is a reliable electronic means of communicating a disabling requesting that will provide certainty regarding the identity of both the sending and receiving parties.

<sup>327</sup> See, e.g., Verizon Reply at 7.

<sup>328</sup> See, e.g., CellAntenna Reply at 7; GEO Comments at 7-9; Comments of Michael D. Bell, Chief Information Officer, Texas Department of Criminal Justice at 1.

<sup>329</sup> Verizon Comments at 7.

(continued....)

(1) an eligible CIS was used in the correctional facility, and include evidence of such eligibility;<sup>330</sup> (2) the CIS is authorized for operation through a license or Commission approved lease agreement, referencing the applicable ULS identifying information; (3) the DCFO has contacted all CMRS licensees providing service in the area of the correctional facility for which it will seek device disabling in order to establish a verifiable transmission mechanism for making qualifying requests and for receiving notifications from the licensee; and (4) it has substantial evidence that the contraband wireless device was used in the correctional facility, and that such use was observed within the 30 day period immediately prior to the date of submitting the request. We seek comment on these requirements and any methods in which the Commission can facilitate interaction between the authorized party and the CMRS licensees during the design, deployment, and testing of CISs. For example, would it be useful for the Commission to maintain a list of DCFOs? What role could the contraband ombudsperson play in facilitating the interaction between DCFOs and CMRS licensees?

105. Finally, we propose that a qualifying request must include specific identifying information regarding the device and the correctional facility. We propose that the request include device identifiers sufficient to uniquely describe the device in question and the licensee providing CMRS service to the device. We seek comment on whether the proposal to include the CMRS licensee is only warranted if the request is made directly to the Commission, and potentially unnecessary if the request is made directly from a DCFO to the CMRS licensee able to confirm that the device is a subscriber on its network. With regard to device identifiers, we seek specific comment on whether other details are necessary in addition to identifiers that uniquely describe the specific devices, such as make and model of the device or the mode of device utilization at the time of detection. Is it relevant whether the device – at the time of detection – was making an incoming or outgoing voice call, incoming or outgoing SMS text or MMS (multimedia) message, or downloading or uploading data?

106. We seek additional comment on whether other details are necessary in terms of location and time identifiers, such as latitude and longitude to the nearest tenth of a second, or frequency band(s) of usage during the detection period, in order to accurately identify and disable the device. Is it necessary to require that a request include specific identifiers to accurately identify and disable the device, or would providing the flexibility to include alternative information to accommodate changes in technology be appropriate, and what types of alternative information would further our goal of an efficient disabling process? Specifically, what is necessary to accurately identify and disable the device? For example, common mobile identifiers include international mobile equipment identifier (IMEI) and the international mobile subscriber identity (IMSI), used by GSM, UMTS, and LTE devices; and electronic serial number (ESN), mobile identification number (MIN), and mobile directory number (MDN), used by CDMA devices. Should additional information be required to accurately identify a specific wireless device for requested disabling? Are there significant differences in the identifying information of current wireless devices (e.g., android, iOS, windows) that must be accounted for? We seek to minimize burdens for those providing information, by only requiring what is essential to properly disable.

107. We seek comment on whether there are commonalities that would permit standardized information sharing, while still taking into account the full range of devices, operating systems, and carriers. We also seek comment on the appropriate format of a qualifying request to streamline the process and reduce administrative burdens. Would it be more efficient for carriers to develop a common data format so that corrections facilities, through a DCFO, are not required to develop a different format for each wireless provider? Should any of these requirements vary depending on whether the wireless provider is small or large?

108. In comments, Tecore raises the concern that SIM cards can be easily replaced so that

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<sup>330</sup> See *supra* paras. 100-101.

(continued....)

devices are only temporarily deactivated.<sup>331</sup> After review of the record, we recognize that termination of service alone may be an incomplete solution capable of inmate exploitation. Today, we propose disabling rules as a potentially more effective approach to ensure that not only is service terminated to the detected contraband device, but also that the device is rendered unusable on that carrier's network. We seek comment on the technical feasibility of this proposed disabling requirement, including the costs and benefits of implementing such a requirement. We also seek comment on the implications of proposed disabling on 911 calls.<sup>332</sup> We note that a disabled device will not have 911 calling capability, whereas a service terminated device would maintain 911 calling capability pursuant to the Commission's current rules regarding non-service initialized (NSI) phones.<sup>333</sup> While today we propose to require contraband wireless device disabling, should we nonetheless maintain the requirement that CMRS carriers keep 911 capability for such disabled contraband phones, subject to the outcome of the NSI proceeding? What are the costs and benefits to stakeholders of such a requirement?

109. We propose that a qualifying request must also include correctional facility identifiers, including the name of the correctional facility, the street address of the correctional facility, the latitude and longitude coordinates sufficient to describe the boundaries of the correctional facility, and the call signs of the Commission licenses and/or leases authorizing the CIS. We seek comment on whether this information will provide sufficiently accurate information about the correctional facility to ensure that the carrier can restrict the disabling of wireless devices to those that are located within that facility.

110. *Disabling Process.* As a preliminary matter, we propose to require that the CMRS licensee must provide a point of contact suitable for receiving qualifying requests to disable contraband wireless devices in correctional facilities. We seek to ensure that such requests can be transmitted in an expeditious manner and to have confidence that the request will be received and acted upon. We seek comment on this proposal.

111. We recognize the need to safeguard legitimate devices from being disabled. Accordingly, we seek comment on what steps, if any, the CMRS licensee should be required to take to verify the information received, whether customer outreach should be part of the process, and the time frame within which the steps must be taken. We seek information to assist us in determining what level of carrier investigation, if any, should be required to determine whether there is clear evidence that the device sought to be disabled is not contraband. We also seek comment on what level of customer outreach, if any, should be required to ensure that the disabling request is not erroneous.

112. With regard to the scope of carrier investigations, we seek comment on a range of possible options, including requiring the carrier to immediately disable the wireless devices upon receipt of a qualifying request from an authorized party without conducting any investigation; requiring the carrier to conduct brief research of readily accessible data prior to disabling or to respond to a series of Commission questions regarding the status of the wireless device to determine its status; or requiring the carrier to use all data at its disposal prior to disabling. We seek comment on the costs and benefits of each of these potential approaches.

113. With regard to customer outreach, we again seek comment on a range of approaches, including requiring immediate disabling without any customer outreach, or requiring the carrier to contact the subscriber of record through any available means (e.g., text, phone, email) and provide a reasonable amount of time prior to disabling for the customer to demonstrate that the disabling request is in error. We seek comment on whether a particular alternative enables inmates to evade device disabling. Each of

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<sup>331</sup> Tecore Comments at 22-24.

<sup>332</sup> See *supra* paras. 40-45.

<sup>333</sup> The Commission has proposed revising its rules to sunset, after a six month period, the requirement that NSI phones be 911 capable. See *supra* note 148.

these approaches impacts carrier response time and the ability to address, however unlikely, disabling errors. If we require some level of carrier investigation or customer outreach, we provide the CMRS licensees a method to reject a qualifying request if it is determined the wireless device in question is not contraband.

114. We also propose that the CMRS licensee must provide notification to the DCFO within a reasonable time period that it has either disabled the device or rejected the request. We seek comment on what the reasonable time period should be for this notification, whether the licensee must provide an explanation for the rejection, and whether the DCFO can contest the rejection. We seek comment on all aspects of the disabling process regarding verification of disabling requests, particularly the costs and benefits to the wireless providers, CIS operators, and the correctional facilities.

115. *Timeframe for Disabling.* We seek comment on various options for the appropriate timeframe for disabling a contraband wireless device, or rejecting the request if appropriate, each of which might be impacted by the range of potential levels of carrier investigation in independently verifying a disabling request and engaging in customer outreach. We believe that appropriate time frames should strike a reasonable balance between the need for prompt action to disable a contraband device potentially used for criminal purposes, and licensee resources required to either verify and implement, or reasonably reject a qualifying request. CellAntenna recommends a “staged” obligation between one hour and 24 hours depending on the volume of requests,<sup>334</sup> and other commenters suggest immediate action or action within one hour.<sup>335</sup> These positions would be consistent with requiring CMRS licensees to disable devices without any independent investigation or, at best, after a brief period of research using readily available resources, but achieve the goal of promptly disabling contraband wireless devices. In contrast, if carriers are required to disable devices following exhaustive research or customer outreach, a period of seven days or more would likely be more appropriate. While providing greater assurance that the disabling is not an error, a longer period allows further use of an identified contraband phone.

116. If the carrier attempts to contact the device’s subscriber of record to permit a legitimate user the opportunity to demonstrate that the device is not contraband, how long should the user have to respond and does this notification requirement unnecessarily prolong device disabling? To what extent could a longer notification period increase the risk of inadvertently tipping off the user of a contraband device and thereby create opportunities for malefactors to cause harm or circumvent the correctional facility’s efforts to address the illegal use? We seek specific comment regarding what periods of time are required in order to adequately balance the public safety needs with wireless provider concerns. We also seek comment on whether small entities face any special or unique issues with respect to disabling devices such that they would require additional time to comply.

117. Finally, we believe that the FCC process for determining CIS eligibility discussed above will substantially ensure that only contraband wireless devices located within correctional facilities are identified for carrier disabling. At the same time, we believe it is worthwhile to seek comment on the methods that would be available to wireless providers to minimize any impact on customers whose devices are not located within a correctional facility. We seek comment on the costs and burdens associated with establishing a process to overcome any such instances. Are there contractual provisions in existing contracts between CMRS providers and their customers that address this or similar issues? We also seek comment on what period of time would be reasonable to expect a CMRS licensee to reactivate a disabled device. For example, what methods of discovery will sufficiently confirm that a wireless device is not contraband? Is 24 hours a reasonable period to resolve potential errors and how extensive is the burden on subscribers to remain disabled for that period? What is the most efficient method of notifying the carriers of errors, if originating from parties outside a correctional facility, and of

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<sup>334</sup> CellAntenna Reply at 8-10.

<sup>335</sup> See, e.g., Triple Dragon Reply at 5, 8; GEO Comments at 7-9.

notifying subscribers of reactivation?

118. In the *Notice*, the Commission also sought comment on CellAntenna's proposal that we adopt a rule to insulate carriers from any legal liability for wrongful termination, while noting that wireless carriers' current end user licensing agreements may already protect the carriers.<sup>336</sup> We seek further comment on this proposal. Specifically, we seek comment on whether the Commission should create a safe harbor by rule for wireless providers that comply with the federal process for disabling phones in correctional facilities. How broadly should that safe harbor be written, and should it apply only to wireless providers that comply with every aspect of the rules we adopt or also those that act in good-faith to carry out the disablement process? Does the Commission have authority to adopt a safe harbor? Is our authority to adopt the rules at issue sufficient to create a safe harbor? Are there other provisions of the Communications Act not previously discussed that would authorize a safe harbor? And what, if any, downsides are there to creating a safe harbor for wireless providers that comply with federal law?

119. In the *Notice*, the Commission also sought comment on the extent to which providers or operators of managed access or detection systems comply with Section 705 if they divulge or publish the existence of a communication for the purpose of operating the system, and whether such providers or operators are entitled to receive communications under Section 705.<sup>337</sup> Section 705 of the Act generally prohibits, except as authorized under Chapter 119, Title 18 of the U.S. Code, any person "receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio" from divulging or publishing the "existence, contents, substance, purport, effect or meaning thereof" to another person other than through authorized channels.<sup>338</sup> Additionally, Chapter 206, Title 18 of the U.S. Code, generally prohibits the use of pen register and trap and trace devices without a court order,<sup>339</sup> subject to several exceptions including where a provider of a communications service obtains the consent of the user.<sup>340</sup> The Commission sought comment on whether any of the proposals regarding detection and MASs would implicate the pen register and trap and trace devices chapter of Title 18 of the U.S. Code.<sup>341</sup>

120. ShawnTech believes that the operation of its MASs is in compliance with federal and state law concerning the use of pen register and trap and trace devices, but expresses concern that detection systems that function to terminate service to contraband devices may not be in compliance.<sup>342</sup> In addition to the questions the Commission asked in the *Notice*, we seek comment on whether and to what extent a system used to request wireless provider disabling of a contraband wireless device pursuant to a Commission rule raises issues under Title 18 or Section 705 that may be different from those raised

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<sup>336</sup> *Notice*, 28 FCC Rcd at 6634, para. 71.

<sup>337</sup> *Id.* at 6635, para. 75.

<sup>338</sup> 47 U.S.C. § 605(a). Further, it provides as relevant herein: "No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. . . ." *Id.*

<sup>339</sup> 18 U.S.C. §§ 3121-3127. A pen register is a device or process that "records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted." *Id.* § 3127(3). A trap and trace device is a device or process that captures an incoming electronic impulse that identifies the "originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication." *Id.* § 3127(4). As defined, neither a pen register nor trap and trace device captures the contents of any communication. *Id.* § 3127(3)-(4).

<sup>340</sup> *Id.* § 3121(b)(3).

<sup>341</sup> *See* 18 U.S.C. §§ 3121-3127.

<sup>342</sup> *See* ShawnTech Comments at 6-7.

(continued....)

by MAS implementation.

121. Some commenters in response to the *Notice* also have raised concerns about the applicability of the privacy obligations under Section 222 of the Communications Act.<sup>343</sup> After review of the record, we do not find that comments submitted in response to the *Notice* demonstrate that Section 222 would prohibit a carrier from complying with a Commission rule mandating a disabling process such as that proposed here.<sup>344</sup> To the extent commenters maintain a contrary view, we seek comment on this issue clearly providing support for such a position and on any other relationship of Section 222 to our proposed rules.

#### **J. Notification to CIS Operators of Carrier Technical Changes**

122. In the Order, we adopt a requirement that CMRS licensees that are parties to lease arrangements for CISs must provide written notification (e.g., e-mail, facsimile) to a CIS operator at least 90 days in advance of adding a new frequency band(s) to their service offerings or deploying a new air interface technology (e.g., a carrier that previously offered CDMA deploying LTE), unless a different timeframe is agreed to by both parties, so that CISs can be timely upgraded to prevent spectrum gaps in the system that might be exploited by inmates.<sup>345</sup> We determined that the benefit of a notification requirement that strives to ensure the effectiveness of a CIS outweighs the minimal burden on the CMRS licensees of being required to comply with a notification requirement only for periodic, significant technical changes. We recognize that a notification requirement that is too broad in scope, resulting in the need to send notifications possibly on a daily basis for minor technical changes, could be unduly burdensome on CMRS licensees. We also recognize that lack of notice to CIS operators of certain types of carrier system changes could potentially result in the CIS not providing the strongest signal in the correctional facility, compromising the system's effectiveness if contraband communications pass directly to the carrier network. In this Further Notice, we seek comment on whether we should expand our notification requirement adopted today to require, as GTL originally proposed, that CMRS licensees notify CIS operators in advance of network changes likely to impact the CIS.<sup>346</sup> Specifically, we seek comment on what other carrier network changes implemented without notice to CIS providers could render the systems in the correctional facilities ineffective, while also seeking comment on whether it is unduly burdensome to require notification for every routine carrier network modification. To what extent should we require notification for additional types of carrier network changes, and if so, what specific network changes (e.g., transmitter power or antenna modifications) should be included? Would it be feasible to adopt a rule requiring a CMRS licensee providing service at a correctional facility to notify a CIS provider in advance of any network change likely to impact the CIS? We seek comment on AT&T's position that CIS providers should be required to respond within 24 hours to any notification from a CMRS licensee that the CIS is causing adverse effects to the carrier's network.<sup>347</sup> We also seek comment

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<sup>343</sup> 47 U.S.C. § 222; *see, e.g.*, Letter from Brian J. Benison, AT&T, to Marlene H. Dortch, Secretary, FCC (Nov. 12, 2015) (suggesting that the Commission “clarify the obligations of the managed access vendors under the CPNI and other privacy rules”); Triple Dragon Reply at 5-6 (arguing that section 222 would permit carriers to de-provision a device at the request of a prison official).

<sup>344</sup> *See* 47 U.S.C. § 222(c)(1) (providing limits on telecommunications carriers' use and disclosure of consumer proprietary network information, “except as required by law”); *see also Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199, 1203 (2015) (“Rules issued through the notice-and-comment process are often referred to as ‘legislative rules’ because they have the ‘force and effect of law.’”) (citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-303 (1979)).

<sup>345</sup> *See supra* paras. 75-77.

<sup>346</sup> GTL Petition at 12-13.

<sup>347</sup> AT&T Comments at 6.

(continued....)

on the costs and benefits of any suggested notification requirements.

#### **K. Other Technological Solutions**

123. In the *Notice*, the Commission invited comment on other technological solutions to address the problem of contraband wireless devices in correctional facilities, including those solutions discussed in previously filed documents referred to in the *Notice*.<sup>348</sup>

124. “*Quiet Zones*.” In response to the *Notice* seeking comment regarding alternative technological solutions to the contraband problem,<sup>349</sup> some commenters suggest that the Commission mandate “dead zones” or “quiet zones” in and around correctional facilities. Although the proposals vary somewhat from a technical perspective and are referred to by different names, the common goal seems to be the creation of areas in which communications are not authorized such that contraband wireless devices in correctional facilities would not receive service from a wireless provider.

125. CellAntenna’s position is that the Commission has authority to modify spectrum licenses to create areas, such as in correctional facilities, in which wireless services are not authorized.<sup>350</sup> CellAntenna refers to NTCH’s recommendation for “quiet zones” where no licensee would be authorized to provide services.<sup>351</sup> CellAntenna suggests that, given the variability in geography, each local correctional facility should be allowed to determine its need for a “no service” zone and petition the Commission to establish the “no service” zone and procedures for the registration of complaints of interference outside of the zones.<sup>352</sup> Despite the fact that CellAntenna references NTCH’s comments, NTCH’s plan for the designation of “quiet zones” similar to radio astronomy or other research facilities to cover correctional facilities appears to differ from CellAntenna’s “no service” zones because, according to NTCH’s plan, there would be an official entity responsible for preventing unauthorized communications and for offering service over authorized frequencies in the prison area, called the “Prison Service Provider.”<sup>353</sup> NCIC suggests that the Commission create “dead zones” around correctional facilities in which carriers would be required to prevent the signal from reaching the correctional facility.<sup>354</sup> GTL agrees that the Commission should explore the creation of “dead zones” or “quiet zones.”<sup>355</sup>

126. Similar to a “no service” zone, MSS proposes an alternative approach called geolocation-based denial (GBD) which permits a correctional facility to request that the Commission declare the facility outside the service area of all CMRS carriers if the facility has at least 300 meters of space in all directions between secure areas accessible by inmates and areas with unrestricted public access.<sup>356</sup> MSS describes GBD as a low-risk solution that will address highly problematic rural maximum

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<sup>348</sup> *Notice*, 28 FCC Rcd at 6636, para. 77.

<sup>349</sup> *Id.*

<sup>350</sup> CellAntenna Reply at 3-4.

<sup>351</sup> *Id.* at 4.

<sup>352</sup> *Id.* at 5.

<sup>353</sup> NTCH Comments at 3-5.

<sup>354</sup> NCIC Comments at 2.

<sup>355</sup> GTL Comments at 4.

<sup>356</sup> MSS Comments at 29.

(continued....)



security prisons.<sup>357</sup> ACA supports the creation of “quiet zones” and GBD.<sup>358</sup>

127. The carriers oppose the “quiet zone”-like proposals. AT&T opposes NCIC’s proposal to create “quiet zones” around correctional facilities in which carriers are unauthorized to provide wireless service,<sup>359</sup> claiming that a quiet zone would prevent the completion of legitimate emergency calls from the correctional facility and vicinity within the quiet zone. Even in rural areas, Verizon suggests, legitimate communications in the areas around prisons could be impacted.<sup>360</sup> In opposing the idea of a quiet or exclusion zone, Verizon argues that “these proposals would indiscriminately prevent legitimate communications, including public safety communications from being completed both inside and outside the prison grounds.”<sup>361</sup> CTIA opposes the establishment of quiet zones because they would unnecessarily complicate wireless network design and be an intrusion on licensees’ exclusive spectrum rights.<sup>362</sup>

128. In this Further Notice, we seek additional comment on the proposals in the record for the mandatory creation of “quiet zones” or “no service” zones in order to help us better understand the similarities and differences among the proposals and receive more detailed information in the record regarding how the zones would be created from a legal and technical perspective. What are the methods wireless providers would use to create the quiet zone, including technical criteria used to define the zone? Should there be a field strength limit on the perimeter of the zone and, if so, what is the appropriate limit? Would the limits set forth in Commission rule 15.109<sup>363</sup> applicable to unintentional radiators be appropriate and how would this be measured? Or would a different criterion, such as 15 dBu, be appropriate to ensure calls outside the perimeter could be completed while not providing the ability for connection to the network inside the perimeter? How would such a limit impact carrier network design? Again, we request that commenters elaborate on the role of the Commission in the creation of these zones and the legal basis for their establishment. We query whether “quiet zones” could be created voluntarily or whether there is a legal bar to their creation in the absence of Commission action. We also seek comment on the application of “geo-fencing” in the contraband wireless device context and how it differs from a “quiet zone.” Just as geo-fencing software can prevent drones from flying over a specific location, could geo-fencing be used to create a virtual perimeter around a correctional facility such that wireless devices would be disabled within the geo-fence? We seek comment on whether geo-fencing could be used to create zones within which contraband wireless devices would be inoperable and whether this technology would permit the delivery of emergency calls within the zone or interfere with other legitimate communications outside the geo-fence.

129. *Network-Based Solution.* Relatedly, we seek comment on the concept of requiring CMRS licensees to identify and disable contraband wireless devices in correctional facilities using their own network elements, including base stations and handsets/devices. As technology evolves, CMRS licensees are acquiring new and better ways of more accurately determining the precise location of a wireless device. Indeed, the Commission addressed the technological advances and need to improve location accuracy in the context of emergency 911 calling when it adopted E911 location accuracy deadlines aimed at enhancing PSAPs’ ability to accurately identify the location of wireless 911 callers

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<sup>357</sup> *Id.* at 31.

<sup>358</sup> ACA Reply at 4.

<sup>359</sup> AT&T Reply at 7, n.18.

<sup>360</sup> Verizon Reply at 11.

<sup>361</sup> *Id.* at 10.

<sup>362</sup> CTIA Reply at 10.

<sup>363</sup> 47 CFR § 15.109.

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when indoors.<sup>364</sup> In order to meet the Commission's requirements over the next several years, carriers will be required to deploy technology capable of locating wireless devices to within certain distances or coordinates.<sup>365</sup> The Commission noted the "critical importance" of improved indoor location accuracy to "enhance public safety and address the need to develop alternative technological approaches to address indoor location."<sup>366</sup> We also know that carriers currently have ways of determining the location of a wireless device using an analysis of call records or Global Positioning System (GPS) technology. In fact, more than 20 states have enacted legislation based on the Kelsey Smith Act that requires carriers to give law enforcement call location information in an emergency involving the risk of death or serious injury.<sup>367</sup> Further, there are device applications (e.g., Uber or Google Maps) that enable the identification of the location of the device through GPS technology located in the device. Given the improved and evolving capability of carriers to identify the location of wireless devices, we seek comment on whether existing methodologies could also be effective in the context of contraband wireless devices in correctional facilities. We acknowledge that an approach relying solely on GPS technology may not be effective inside correctional facilities if the GPS capability can be disabled or if GPS signals are insufficient within the correctional facility. Further, we note that a carrier's ability to identify the location based on network (not device GPS) data is affected by the number, location, and orientation of carrier base stations in the area. That said, we seek comment on whether it is possible for CMRS licensees to use their own network elements to determine that a wireless device is in a correctional facility, and what are the costs and benefits of such a process.

130. If we require CMRS licensees to identify wireless devices in correctional facilities using their own network elements, should we require carriers to recognize whether contraband wireless devices are persistently used in a correctional facility located in the carrier's geographic service area and to disable them using their own resources? How should we define "persistently"? How would the carriers determine that a wireless device in a correctional facility is, in fact, contraband? Should the carriers be required to have an internal process in place whereby they could reactivate a device disabled in error? If a network-based solution is feasible, should we require it only if a particular correctional facility requests this approach as opposed to the solution of requiring CMRS licensees to disable devices pursuant to qualifying requests as described above? Do particular types of wireless devices or carrier air interfaces present unique challenges? We seek comment on the implementation, technical, and other issues associated with this carrier network-based solution as well as the costs and benefits associated with this potential solution. In particular, what would the costs be to carriers of complying with a mandate of having to locate contraband wireless devices in all correctional facilities nationwide? Finally, we seek comment on whether the network-based solution described herein raises any privacy concerns, including the privacy obligations under Section 222 of the Communications Act.<sup>368</sup>

131. *Beacon Technology.* We also seek comment on technologies that are intended to disable contraband wireless devices in correctional facilities using the interaction of a beacon system set up in the correctional facility with software embedded in the wireless devices.<sup>369</sup> Essentially, these types of

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<sup>364</sup> See *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259 (2015).

<sup>365</sup> See *id.*

<sup>366</sup> *Id.* at 1266-67, para. 19.

<sup>367</sup> See H.R. 4889, 114<sup>th</sup> Cong., 2d Sess. (2016) (Kelsey Smith Act). The Kelsey Smith Act failed to pass in the U.S. House of Representatives, but similar legislation has passed in more than 20 states. The Kelsey Smith Act mandates the provision of "call location information, or the best available location information" in certain circumstances. The state statutes based on the Kelsey Smith Act, by and large, use similar language when describing what the service providers must provide to law enforcement.

<sup>368</sup> 47 U.S.C. § 222.

<sup>369</sup> See generally *Try Safety Ex Parte* Letters.

technologies rely on a system of beacons creating a restricted zone in a correctional facility, such that any wireless device in the zone will not operate. One of the benefits of this approach is that this technology would appear to render the phone unusable by an inmate for any purpose. In other words, some of the technologies discussed above could prevent an inmate from placing a call, but they may not prevent the inmate from using the phone for taking videos or otherwise sharing or disseminating information that itself could pose a threat to public safety. We thus also seek comment on whether this type of technology—or elements thereof—can and should be incorporated into any other approach the Commission may take. For example, should we consider requiring that phones be rendered completely unusable as part of our implementation of another solution, including the network-based solution discussed above.

132. At the same time, it appears that beacon-based technologies would function effectively only if all wireless carriers perform a system update to include the software for all existing and future wireless devices, and all mobile device manufacturers include the software in all devices.<sup>370</sup> We seek comment on this technological solution, including costs and benefits of its implementation. Would this solution require legislation to ensure that all wireless carriers and wireless device manufacturers include the software in the wireless devices? In the absence of legislation, how would the Commission ensure wireless carrier and device manufacturer cooperation and pursuant to what authority would the Commission be acting? How would compliance be enforced? Should it be incorporated as part of the Commission's equipment certification requirements or be made part of an industry certification process? Would a "system update" actually accomplish the goal of ensuring that all wireless devices currently in existence get updated with the software? Would the beacon system in the correctional facility permit 911 or E911 calls from the restricted zone to be connected? Is a voluntary solution possible between the carriers and the providers of beacon technology?

133. We welcome comment on any other new technologies designed to combat the problem of contraband wireless devices in correctional facilities and what regulatory steps the Commission could take to assist in the development and deployment of these new technologies. We seek comment on what additional steps the Commission could take to address the contraband cellphone problem, for example, educational efforts designed to highlight available solutions, other expertise, or additional ways in which we can coordinate stakeholder efforts.

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<sup>370</sup> *Id.*

## V. PROCEDURAL MATTERS

### A. Ex Parte Rules

134. This proceeding shall continue to be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>371</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

### B. Filing Requirements

135. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Commenting parties may file comments in response to this *Notice* in GN Docket No. 13-111; interested parties are not required to file duplicate copies in the additional dockets listed in the caption of this *Notice*.
- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Note that while multiple dockets are listed in the caption of this *Notice*, commenters are only required to file copies in GN Docket No. 13-111.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

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<sup>371</sup> 47 C.F.R. §§ 1.1200 *et seq.*

must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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

### C. Paperwork Reduction Act Analysis

136. The Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

137. The Further Notice contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>372</sup>

### D. Regulatory Flexibility Analysis

138. As required by the Regulatory Flexibility Act of 1980,<sup>373</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted and proposed in this document, respectively. The FRFA is found in Appendix C. The IRFA is found in Appendix D. We request written public comment on the IRFA. Comments must be filed in accordance with the same deadlines as comments filed in response to this *Report and Order and Further Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the IRFA and FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Report and Order and Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.

### E. Congressional Review Act

139. The Commission will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to the

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<sup>372</sup> 44 U.S.C. § 3506(c)(4).

<sup>373</sup> *See* 5 U.S.C. § 603.

Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

**F. Contact Information**

140. For further information regarding the *Report and Order and Further Notice of Proposed Rulemaking*, contact: Melissa Conway (legal) at (202) 418-2887, [Melissa.Conway@fcc.gov](mailto:Melissa.Conway@fcc.gov); or Moslem Sawez (technical) at (202) 418-8211, [Moslem.Sawez@fcc.gov](mailto:Moslem.Sawez@fcc.gov).

**VI. ORDERING CLAUSES**

141. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332, this *Report and Order and Further Notice of Proposed Rulemaking* in GN Docket No. 13-111 IS ADOPTED.

142. IT IS FURTHER ORDERED that the *Report and Order* SHALL BE EFFECTIVE 30 days after publication of the text or a summary thereof in the *Federal Register*.

143. IT IS FURTHER ORDERED that Parts 1 and 20 of the Commission's rules, 47 CFR Part 1 and Part 20, ARE AMENDED as specified in Appendix A, effective 30 days after publication in the *Federal Register*, with the exception of: (1) amended rule Section 20.18, 47 CFR § 20.18, as specified in paragraph 144 below; and (2) except for those rules and requirements that require approval by OMB under the Paperwork Reduction Act, which shall become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

144. IT IS FURTHER ORDERED that amended rule Section 20.18, 47 CFR § 20.18, as specified in Appendix A, shall become effective the later of: 270 days after publication of the text or a summary thereof in the *Federal Register* or the Commission's publication of a notice in the *Federal Register* announcing approval by OMB under the Paperwork Reduction Act of such amended rule Section 20.18 and the relevant effective date.

145. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before 30 days after publication in the *Federal Register* and reply comments on or before 60 days after publication in the *Federal Register*.

146. IT IS FURTHER ORDERED that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission SHALL SEND a copy of the *Report and Order and Further Notice of Proposed Rulemaking* to Congress and to the Government Accountability Office.

147. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final rules

The Federal Communications Commission amends Parts 1 and 20 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

## PART 1—Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

2. Section 1.931 is amended by amending paragraph (a)(1) and adding a new paragraph (a)(2)(v) as follows:

1.931 Application for special temporary authority.

(a) *Wireless Telecommunications Services.* (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA for operation of a station used in a Contraband Interdiction System, as defined in section 1.9003 of this chapter (47 CFR 1.9003), will be afforded expedited consideration if filed at least one day prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) Grant without Public Notice. \* \* \* \* \*

\* \* \* \* \*

(v) The STA is for operation of a station used in a Contraband Interdiction System, as defined in part 1.9003 of this chapter (47 CFR 1.9003).

3. Section 1.9003 is amended by inserting the following after the heading § 1.9003 Definitions and before the paragraph beginning *De facto transfer leasing arrangement*:

§ 1.9003 Definitions.

*Contraband Interdiction System.* Contraband Interdiction System is a system that transmits radio communication signals comprised of one or more stations used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices.

*Contraband wireless device.* A contraband wireless device is any wireless device, including the physical hardware or part of a device, such as a subscriber identification module (SIM), that is

used within a correctional facility in violation of federal, state, or local law, or a correctional facility rule, regulation, or policy.

*Correctional facility.* A correctional facility is any facility operated or overseen by federal, state, or local authorities that houses or holds criminally charged or convicted inmates for any period of time, including privately owned and operated correctional facilities that operate through contracts with federal, state, or local jurisdictions.

4. Section 1.9020 is amended by revising the introductory language of paragraph (e)(2), redesignating current paragraphs (e)(2)(ii) and (e)(2)(iii) as (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii), to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

\* \* \* \* \*

(e) *Notifications regarding spectrum manager leasing arrangements.*

(1) \* \* \*

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for Contraband Interdiction Systems as defined in section 1.9003 of this chapter that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate processing procedures.

(i) \* \* \*

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate processing procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

\* \* \* \* \*

5. Section 1.9030 is amended by revising the introductory language of paragraph (e)(2), redesignating current paragraphs (e)(2)(ii) and (e)(2)(iii) as (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii) to read as follows:

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

\* \* \* \* \*

(e) *Applications for long-term de facto transfer leasing arrangements.*

(1) \* \* \*

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (e)(2)(i) of this section, and applications for Contraband Interdiction Systems as defined in section 1.9003 of this chapter that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.



(i) \* \* \*

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate approval procedures if the application is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for applications processed under the general application procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

\* \* \* \* \*

## PART 20—Commercial Mobile Radio Services

6. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

7. Section 20.18 is amended by amending paragraph (a) and adding a new paragraph (r) as follows:

### § 20.18 911 Service.

(a) *Scope of section.* Except as described in paragraph (r), the following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

- (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and
- (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

\* \* \*

(r) *Contraband Interdiction System (CIS) requirement.* CIS providers regulated as private mobile radio service (see Section 20.3) must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 64.3001 of this chapter, provided that “all wireless 911 calls” is defined as “any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.” This requirement shall not apply if the Public Safety Answering Point or emergency authority informs the CIS provider that it does not wish to receive 911 calls from the CIS provider.

8. Section 20.23 is added to read as follows:

### § 20.23 Contraband wireless devices in correctional facilities.

(a) *Good faith negotiations.* CMRS licensees must negotiate in good faith with entities seeking to deploy a Contraband Interdiction System (CIS) in a correctional facility. Upon receipt of a good faith request by an entity seeking to deploy a CIS in a correctional facility, a CMRS

licensee must negotiate toward a lease agreement. If, after a 45 day period, there is no agreement, CIS providers seeking Special Temporary Authority (STA) to operate in the absence of CMRS licensee consent may file a request for STA with the Wireless Telecommunications Bureau (WTB), accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The request must be served on the CMRS licensee no later than the filing of the STA request, and the CMRS licensee may file a response with WTB, with a copy served on the CIS provider at that time, within five days of the filing of the STA request. If WTB determines that the leasing parties have not negotiated in good faith, WTB may issue STA to the entity seeking to deploy the CIS, notwithstanding lack of accompanying CMRS licensee consent.

- (b) *Prior notice of changes.* CMRS licensees that are parties to lease arrangements for a CIS in a correctional facility must provide written notification to the CIS operator prior to adding new frequency band(s) to their service offerings or deploying a new air interface technology. Notification must be provided no later than 90 days in advance of such changes, unless the CIS operator and licensee mutually agree on a different timeframe.

**APPENDIX B****Proposed rules**

The Federal Communications Commission proposes to amend Part 20 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

**PART 20—Commercial Mobile Radio Services**

1. The authority citation for Part 20 continues to read as follows:

**AUTHORITY:** 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

2. Section 20.23 is amended by adding paragraph (c) to read as follows:

§ 20.23 Contraband wireless devices in correctional facilities.

(a) \*\*\*

(b) \*\*\*

(c) *Disabling contraband wireless devices.* A Designated Correctional Facility Official may request that a CMRS licensee disable a contraband wireless device in a correctional facility detected by a Contraband Interdiction System as described below.

(1) *Licensee obligation.* A licensee providing CMRS service must:

(i) Upon request of a Designated Correctional Facility Official, provide a point of contact suitable for receiving qualifying requests to disable devices; and

(ii) Upon request of a Designated Correctional Facility Office to disable a contraband wireless devices, verify that the request is a qualifying request and, if so, permanently disable the device.

(2) *Qualifying request.* A qualifying request must be made in writing via a verifiable transmission mechanism, contain the certifications in paragraph (3) of this section and the device and correctional facility identifying information in paragraph (4) of this section, and be signed by a Designated Correctional Facility Official. For purposes of this section, a Designated Correctional Facility Official means a state or local official responsible for the correctional facility where the contraband device is located.

(3) *Certifications.* A qualifying request must include the following certifications by the Designated Correctional Facility Official:

(i) The CIS used to identify the device is authorized for operation through a Commission license or approved lease agreement, referencing the applicable ULS identifying information;

(ii) The Designated Correctional Facility Official has contacted all CMRS licensees providing service in the area of the correctional facility in order to establish a verifiable transmission mechanism for making qualifying requests and for receiving notifications from the CMRS licensee;

(iii) The Designated Correctional Facility Official has substantial evidence that the contraband wireless device was used in the correctional facility, and that such use was observed within the 30 day period immediately prior to the date of submitting the request; and

(iv) The CIS used to identify the device is an Eligible CIS as defined in paragraph (5) of this section. The Designated Correctional Facility Official must include a copy of a FCC Public Notice listing the eligible CIS.

(4) *Device and correctional facility identifying information.* The request must identify the device to be disabled and correctional facility by providing the following information:

(i) Identifiers sufficient to uniquely describe the device in question;

(ii) Licensee providing CMRS service to the device;

(iii) Name of correctional facility;

(iv) Street address of correctional facility;

(v) Latitude and longitude coordinates sufficient to describe the boundaries of the correctional facility; and

(vi) Call signs of FCC Licenses and/or Leases authorizing the CIS.

(5) *Eligible CIS.* (i) In order to be listed on a FCC Public Notice as an Eligible CIS, a CIS operator must demonstrate to the Commission that:

(A) All radio transmitters used as part of the CIS have appropriate equipment authorization pursuant to Commission rules;

(B) The CIS is designed and will be configured to locate devices solely within a correctional facility, secure and protect the collected information, and is capable of being programmed not to interfere with emergency 911 calls; and

(C) The methodology to be used in analyzing data collected by the CIS is sufficiently robust to provide a high degree of certainty that the particular wireless device is in fact located within a correctional facility.

(ii) Periodically, the Commission will issue Public Notices listing all Eligible CISs.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>374</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)*.<sup>375</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present FRFA conforms to the RFA.<sup>376</sup>

**A. Need for, and Objectives of, the Second Report and Order**

2. In today's *Report and Order (Order)*, the Commission adopts rules to facilitate the deployment of different technologies used to combat contraband wireless devices in correctional facilities nationwide. Inmates have used contraband wireless devices order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity. The use of contraband wireless devices by inmates has grown within the U.S. prison system parallel to the growth of wireless device use by the general public.<sup>377</sup> For example, GAO reports that the number of confiscated cell phones has grown from 1,774 in 2008 to 3,684 in 2010.<sup>378</sup> A test of wireless device interdiction technology in two California State prisons detected over 25,000 unauthorized communication attempts over an 11 day period in 2011.<sup>379</sup> Further, an interdiction system permanently installed in a Mississippi correctional facility reportedly blocked 325,000 communications attempts in the first month of operation, and as of February 2012, had blocked over 2 million communications attempts.<sup>380</sup> It is clear that inmate possession of wireless devices is a serious threat to the safety and welfare of correctional facility employees, other inmates, and the general public.

3. Today's *Order* reduces regulatory burdens for those seeking to expeditiously deploy Contraband Interdiction Systems (CISs), such as managed access systems or detection systems, which are used in correctional facilities to detect and block transmissions to or from contraband wireless devices or to obtain identifying information from these devices. The Commission streamlines the process for approving or accepting spectrum lease applications or notifications for spectrum leases entered into for CISs. The Commission grants a waiver for CISs reducing certain regulatory status filing requirements. Additionally, the *Order* establishes requirements designed to ensure that agreements among CMRS licensees and CIS providers are negotiated expeditiously, while also adequately preserving licensees' exclusive spectrum rights.

4. In response to widespread support – across all stakeholders – for the proposed rule and

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<sup>374</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>375</sup> *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, et al.*, GN Docket No. 13-111, et al., Notice of Proposed Rulemaking, 28 FCC Rcd 6603, 6643 at Appx. B (2013).

<sup>376</sup> See 5 U.S.C. § 604.

<sup>377</sup> See NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, CONTRABAND CELL PHONES IN PRISONS: POSSIBLE WIRELESS TECHNOLOGY SOLUTIONS I (Dec. 2010) (NTIA Report), available at [http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport\\_december2010.pdf](http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport_december2010.pdf).

<sup>378</sup> GAO Report at 22.

<sup>379</sup> California Department of Corrections and Rehabilitation, Fact Sheet: Contraband Cell Phones in CDCR Prisons and Conservation Camps, at 1 (2012), available at <http://www.cdcr.ca.gov/Contraband-CellPhones/docs/Contraband-Cell-Phone-Fact-Sheet-January-2012.pdf>.

<sup>380</sup> Wireless Service Interruptions, GN Docket No. 12-52, Comments of Tecore Networks at 10 (filed Apr. 30, 2012) (Tecore Wireless Service Interruption Comments).

procedural modifications to streamline the CIS leasing process, the Commission establishes rule changes to process all spectrum leases for CIS overnight, with the approval or acceptance posted to the Universal Licensing System the following business day after filing. Specifically, the Commission amends Sections 1.9003, 1.9020, and 1.9030 of the Commission's rules to enable the immediate processing of lease applications or notifications for CISs regardless of whether the approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses, or whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions. The Commission finds that nothing in the expedited processing of CIS lease applications will have an adverse impact on the ability of a small businesses to participate in Commission processes to acquire spectrum or to provide wireless services and maintains the requirement to comply with unjust enrichment obligations where applicable.

5. In order to implement the streamlined leasing process, the Commission alters internal procedures to ensure that qualified lease filings are identified and handled immediately. Staff will review the lease applications and notifications and assess whether they are exclusively for a CIS and ascertain other relevant information in order to reliably determine whether the filings are subject to immediate processing. CIS leases will be processed overnight if the application or notification is sufficiently complete under existing Commission rules, and if the application or notification does not seek a waiver or a declaratory ruling with respect to a Commission rule.

6. In today's *Order*, the Commission grants a waiver of Section 20.9 of the Commission's rules, to the extent necessary, so that CIS operators will not be required to file a separate modification application to receive private mobile radio system (PMRS) regulatory status. Instead, when a CIS operator submits the exhibit to its lease application stating that it is a CIS, it will be permitted to also indicate whether it is PMRS, and the approved or accepted spectrum lease will subsequently reflect that regulatory status.

7. Regulated as PMRS, CIS operators would no longer be obligated to comply with the Commission's common carrier 911 and E911 rules applicable to CMRS licensees. However, acknowledging the overriding importance of ensuring availability of emergency 911 calls from correctional facilities, subject to evaluation by the local public safety answering point (PSAP), the Commission finds the public interest is best served by requiring CIS providers operating as PMRS to route 911 calls to the PSAP. Therefore, the Commission amends Section 20.18 to require CIS providers regulated as PMRS to transmit all wireless 911 calls to the PSAP, unless the PSAP informs the CIS provider that it does not wish to receive the calls.

8. As an additional measure designed to expedite the deployment of managed access and detection systems in correctional facilities, the Commission also amends Section 1.931 of the Commission's rules to exempt CIS providers seeking a Special Temporary Authority (STA) for a CIS from the requirement that they file the application 10 days prior to operation. The Commission will process STA requests for CISs on an expedited basis and without prior public notice, but finds it unnecessary to modify Form 601 in order to achieve these streamlining goals. As with lease applications and notifications, the Commission will establish internal procedures by which Staff will review filings and identify STAs for CISs to be handled according to immediate processing procedures.

9. The Commission will forbear from applying Sections 308, 309, and 310(d) to the extent necessary to implement these proposals for the streamlining of *de facto* CIS leases and STAs for CISs. The Commission believes that the statutory forbearance requirements are met for *de facto* CIS leases that comply with the necessary immediate approval procedures in our rules, but also involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment provisions and transfer restrictions.

10. In order to ensure cooperation among CIS providers and CMRS carriers – both large and small – the Commission will require that CMRS licensees negotiate in good faith with entities seeking to deploy a CIS in a correctional facility. Upon receipt of a good faith request by a CIS provider, a CMRS licensee will have 45 days to negotiate a lease agreement in good faith. If, after that 45-day period, there

is no agreement, CIS providers seeking STA to operate in the absence of CMRS licensee consent may file a request for STA with the Wireless Telecommunications Bureau (WTB), with a copy served at the same time on the CMRS licensee, accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The CMRS licensee will then be given five days to respond. If WTB then determines that the leasing parties have not negotiated in good faith, WTB may issue an STA to the entity seeking to deploy the CIS, notwithstanding the lack of accompanying CMRS licensee consent. We will consider evidence of good faith negotiations on a case-by-case basis, and may take additional steps as necessary to authorize CIS operations should we determine there is continued lack of good faith negotiations toward a CIS lease agreement.

11. As a further safeguard to ensure coordination between CMRS licensees and CIS operators, the Commission adopts a requirement that CMRS licensees that are parties to lease arrangements for CISs in correctional facilities must provide written notification to the CIS operator no later than 90 days in advance of adding new frequency band(s) to its service offerings or deploying a new air interface technology (e.g., a carrier that previously offered CDMA deploying LTE), unless a different timeframe is agreed to by both parties. This will allow CISs to be timely upgraded to prevent spectrum gaps in the system that could be exploited by users of contraband wireless devices in correctional facilities. In weighing the potential costs and public interest benefits of this requirement, the Commission declines to adopt further notifications requirements at this time, such as when a CMRS makes any changes whatsoever to its network. The Commission believes the adopted notification requirement strikes the appropriate balance between avoiding overly burdensome or costly requirements and promoting cooperation and coordination necessary to effectively implement of CIS.

12. Finally, in order to assist CIS operators and CMRS licensees in complying with their regulatory obligations, the Commission intends designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson's duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, and resolving issues that may arise during the leasing process. With this appointment, the Commission ensures continued focus on this important public safety issue and solidify our commitment to combating the problem.

13. All new and revised rules adopted in today's *Second Report and Order* are set forth in Appendix A (Final Rules).

**B. Summary of Significant Issues Raised by Public Comments in Response to IRFA**

14. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed below in paragraphs 49-53) in order to reduce the economic impact of the rules enacted herein on such entities.

**C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration**

15. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>381</sup>

16. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which Rules Will**

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<sup>381</sup> 5 U.S.C. § 604 (a)(3).

### Apply

17. The RFA directs agencies to provide a description of – and where feasible, an estimate of – the number of small entities that may be affected by the rules adopted herein.<sup>382</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>383</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>384</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>385</sup>

18. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>386</sup>

19. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>387</sup> According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.<sup>388</sup> Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.<sup>389</sup> Thus, under this size standard, the majority of firms can be considered small.

20. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>390</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>391</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>392</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

21. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or

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<sup>382</sup> 5 U.S.C. § 604(a)(3).

<sup>383</sup> 5 U.S.C. § 601(6).

<sup>384</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>385</sup> 15 U.S.C. § 632.

<sup>386</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advo/stats/sbfaq.pdf> (accessed Dec. 2010).

<sup>387</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>388</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

<sup>389</sup> See *id.*

<sup>390</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>391</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>392</sup> See *id.*



fewer employees.<sup>393</sup> According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>394</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>395</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

22. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>396</sup> According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>397</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>398</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

23. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>399</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>400</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>401</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Notice*.

24. *800 and 800-Like Service Subscribers.*<sup>402</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>403</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>404</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>405</sup> We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA

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<sup>393</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>394</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>395</sup> See *id.*

<sup>396</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>397</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>398</sup> See *id.*

<sup>399</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>400</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>401</sup> See *id.*

<sup>402</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>403</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>404</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>405</sup> See *id.*

size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

25. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>406</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>407</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>408</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>409</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>410</sup> Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>411</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>412</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

26. *Broadband Personal Communications Service*. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>413</sup> For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>414</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>415</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won

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<sup>406</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>407</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>408</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>409</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>410</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>411</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>412</sup> See *id.*

<sup>413</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

<sup>414</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

<sup>415</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

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approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>416</sup> In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.<sup>417</sup> There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.<sup>418</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.<sup>419</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.<sup>420</sup> Of the 14 winning bidders, six were designated entities.<sup>421</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>422</sup>

27. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.<sup>423</sup> This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.<sup>424</sup> Four winning bidders that identified themselves as very small businesses won 17 licenses.<sup>425</sup> Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

28. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz

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<sup>416</sup> See FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

<sup>417</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>418</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>419</sup> See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>420</sup> See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>421</sup> *Id.*

<sup>422</sup> See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) (“AWS-1 and Broadband PCS Procedures Public Notice”).

<sup>423</sup> See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

<sup>424</sup> *Id.* at 23 FCC Rcd at 7521-22.

<sup>425</sup> See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749 (2008).

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bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>426</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>427</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.<sup>428</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.<sup>429</sup> Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.<sup>430</sup> The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>431</sup> A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>432</sup>

29. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>433</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>434</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

30. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.<sup>435</sup> We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

31. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special

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<sup>426</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>427</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>428</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

<sup>429</sup> "FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996," *Public Notice*, 11 FCC Rcd 18599 (WTB 1996).

<sup>430</sup> *Id.*

<sup>431</sup> See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 11 FCC Rcd 18,637 (WTB 1996).

<sup>432</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>433</sup> See "800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (WTB 2000).

<sup>434</sup> See "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

<sup>435</sup> See generally 13 C.F.R. § 121.201, NAICS code 517210.

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provisions such as bidding credits.<sup>436</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>437</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>438</sup> Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>439</sup> The SBA approved these small size standards.<sup>440</sup> The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.<sup>441</sup> Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>442</sup> The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>443</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>444</sup> In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.<sup>445</sup>

32. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.<sup>446</sup> The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for

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<sup>436</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52-59 Report and Order*).

<sup>437</sup> See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88 para. 172.

<sup>438</sup> See *id.*

<sup>439</sup> See *id.* at 1088 para. 173.

<sup>440</sup> See *Alvarez Letter 1999*.

<sup>441</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>442</sup> *Id.*

<sup>443</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>444</sup> See *id.*

<sup>445</sup> “Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60, Down Payments due August 19, 2005, FCC Forms 601 and 602 due August 19, 2005, Final Payment due September 2, 2005, Ten-Day Petition to Deny Period,” Public Notice, 20 FCC Rcd 13424 (WTB 2005).

<sup>446</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).*

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public safety users.<sup>447</sup> An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.<sup>448</sup> Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.<sup>449</sup>

33. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.<sup>450</sup> In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.<sup>451</sup> Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

34. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.<sup>452</sup> The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.<sup>453</sup> Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.<sup>454</sup>

35. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>455</sup> For this category, Census Bureau data

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<sup>447</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

<sup>448</sup> See *Auction of 700 MHz Band Licenses Closes*, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

<sup>449</sup> See “*Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92, Down Payments and FCC Forms 601 and 602 Due August 11, 2011, Final Payments Due August 25, 2011, Ten-Day Petition to Deny Period*,” *Public Notice*, 26 FCC Rcd 10,494 (WTB 2011).

<sup>450</sup> *700 MHz Second Report and Order*, 22 FCC Rcd 15,289.

<sup>451</sup> See *Auction of 700 MHz Band Licenses Closes*, *Public Notice*, 23 FCC Rcd 4572 (2008).

<sup>452</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>453</sup> *Id.*

<sup>454</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>455</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”.

for 2007 show that there were a total of 512 firms that operated for the entire year.<sup>456</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>457</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the *Notice*.

36. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>458</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>459</sup> Of this total, 2,346 firms had annual receipts of under \$25 million.<sup>460</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

37. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category to include: “establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”<sup>461</sup> In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees.<sup>462</sup> For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments, 4 had 500 or greater employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.<sup>463</sup>

38. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>464</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless

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<sup>456</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>457</sup> See *id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>458</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications”, <http://www.census.gov/naics/2007/def/ND517919.HTM>.

<sup>459</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>460</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

<sup>461</sup> U.S. Census Bureau, 2007 NAICS Definitions, 334290 Other communications equipment manufacturing, <http://www.census.gov/econ/industry/def/d334290.htm>.

<sup>462</sup> 13 C.F.R. 121.201, NAICS Code 334220.

<sup>463</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>464</sup> U.S. Census Bureau, 2007 NAICS Definition: 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007%20NAICS%20Search>.

Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees.<sup>465</sup> According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 17 had 1,000 or more employees and 27 had 500 or more employees.<sup>466</sup> Thus, under this size standard, the majority of firms can be considered small.

39. *Engineering Services.* The Census Bureau defines this category to include: “establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems.”<sup>467</sup> The SBA deems engineering services firms to be small if they have \$4.5 million or less in annual receipts, except military and aerospace equipment and military weapons engineering establishments are deemed small if they have \$27 million or less an annual receipts.<sup>468</sup> According to Census Bureau data for 2007, there were 58,391 establishments in this category that operated the full year. Of the 58,391 establishments, 5,943 had \$5 million or greater in receipts and 2,892 had \$10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.<sup>469</sup>

40. *Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing.* The Census Bureau defines this category to include “establishments primarily engaged in manufacturing direction, navigation, guidance, aeronautical, and nautical systems and instruments.”<sup>470</sup> The SBA deems Search, Detection, Navigation, Guidance, Aeronautical, and Nautical and Instrument Manufacturing firms to be small if they have 750 or fewer employees.<sup>471</sup> According to Census Bureau data for 2007, there were 647 establishments in operation in that year. Of the 647 establishments, 36 had 1,000 or more employees, and 50 had 500 or more employees. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>472</sup>

41. *Security Guards and Patrol Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing guard and patrol services.”<sup>473</sup> The SBA deems security guards and patrol services firms to be small if they have \$18.5 million or less in annual receipts.<sup>474</sup> According to Census Bureau data for 2007, there were 9,198 establishments in operation the full year. Of the 9,198 establishments, 355 had greater than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>475</sup>

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<sup>465</sup> 13 C.F.R. § 121.201, NAICS Code 334220.

<sup>466</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>467</sup> U.S. Census Bureau, 2007 NAICS Definitions: 541330 Engineering Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=541330&search=2007%20NAICS%20Search>.

<sup>468</sup> 13 C.F.R. § 121.201, NAICS code 541330.

<sup>469</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-ds\\_name=EC0754SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0754SSSZ1&-_lang=en).

<sup>470</sup> U.S. Census Bureau, 2007 NAICS Definition: 334511 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334511&search=2007%20NAICS%20Search>.

<sup>471</sup> 13 C.F.R. § 121.201, NAICS code 334511.

<sup>472</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>473</sup> U.S. Census Bureau, 2007 NAICS Definition: 561612 Security Guards and Patrol Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561612&search=2007%20NAICS%20Search>

<sup>474</sup> 13 C.F.R. § 121.201, NAICS code 561612.

<sup>475</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0756SSSZ1&-_lang=en).

(continued...)



42. *All Other Support Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing day-to-day business and other organizations support services.”<sup>476</sup> The SBA deems all other support services firms to be small if they have \$7 million or less in annual receipts.<sup>477</sup> According to Census Bureau data for 2007, there were 14,539 establishments in operation the full year. Of the 14,539 establishments, 273 had \$10 million or more in annual receipts, and 639 had \$5 million or greater in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>478</sup>

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

43. The projected reporting, recordkeeping, and other compliance requirements resulting from the *Order* will apply to all entities in the same manner, consistent with the approach we adopted in the *Notice*. The rule modifications, taken as a whole, should have a beneficial, if any, reporting, recordkeeping, or compliance impact on small entities because all CMRS licensees and CIS providers will be subject to reduced filing burdens and recordkeeping. We also expect today’s action to better enable all CMRS licensees and CIS operators, no matter their size, to effectively coordinate and deploy systems to combat the use of contraband wireless devices in correctional facilities.

44. The primary changes are as follows: (1) we revise our rules to enable the immediate processing of lease applications or notifications for CISs regardless of whether the approval or acceptance will result in (a) the lessee holding or having access to geographically overlapping licenses, or (b) a license involving spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions; (2) we grant a waiver of Section 20.9 to CISs; (3) we amend Section 20.18 to require CISs to route 911 calls to the local PSAP, unless the PSAPs does not wish to receive the calls; (4) we exempt CIS providers seeking an STA from the requirement that they file the application ten (10) days prior to operation; (5) we provide 45 days for lease agreement negotiations between CMRS licensees and CIS operators, plus a five day response period, after which the Commission may issue an STA to the CIS operator; (6) we require CMRS licensees to provide notification 90 days in advance of certain network changes; and (7) we designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. With these reforms, we achieve the important public interest goal of combatting the use of contraband wireless devices in correctional facilities nationwide by reducing regulatory burdens for those seeking to expeditiously deploy CISs.

45. For small entities operating CISs at correctional facilities, the rules and processes adopted in today’s *Order* eliminate several barriers CIS deployment. The Commission adopts rules that cut down on the time it takes to process lease agreements and STAs, so that CIS providers can deploy their systems rapidly. Rather than requiring CIS providers to file additional forms demonstrating they will be operating as a CIS in order to receive expedited processing, the Commission instead implements its own internal procedures for identifying those qualifying applications and processing the request immediately. The Commission implements similar internal procedures for identifying STA requests for CISs as exempt from the requirement that they file the application ten days prior to operation, thereby providing for immediate processing without imposing new or additional filing burdens on CIS operators. With the waiver of Section 20.9, we have also eliminated the previous requirement that CIS operators file a separate modification application to request PMRS treatment, thereby conserving resources and reducing burdens on spectrum leasing parties.

46. We recognize that smaller CMRS licensees may have less experience with CISs and

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<sup>476</sup> U.S. Census Bureau, 2007 NAICS Definition: 561990 All Other Support Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561990&search=2007%20NAICS%20Search>.

<sup>477</sup> 13 C.F.R. § 121.201, NAICS code 561990.

<sup>478</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=1000&-ds_name=EC0756SSSZ1&-_lang=en).

fewer resources to provide for expedient and effective lease negotiations within the 45-day period we impose today. However, given that the success of CISs deployment requires all carriers in the relevant area of the correctional facility to execute a lease with the CIS provider, we believe the minimal requirement that CMRS licensees negotiate in good faith is not unduly burdensome. By potentially granting an STA to the entity requesting a CIS deployment in the absence of carrier consent, we allow for any necessary emergency testing and evaluation until such time as the parties can conclude negotiations and submit the applicable lease applications.

47. We also recognize the additional notification requirement in advance of certain network changes adopted in today's *Order* may impose a greater burden on small carriers' limited resources than those of larger CMRS licensees. However, we do not anticipate that the advanced notification requirement will require small entities to hire any professionals. Given the limited circumstances requiring notification and the importance of coordination to the effective implementation of CISs, we believe compliance with this requirement will not unduly burden small entities.

48. Small entities seeking to deploy CISs in correctional facilities will not incur additional or significant compliance burdens as a result of today's *Order*. We maintain the current Forms 601 and 608 required for lease filings and provide for expedited processing without imposing any additional filing requirements. We reduce filing burdens by waiving Section 20.9 for CIS operators, thereby eliminating the need to file a separate modification application to request PMRS treatment. While we create a requirement that CISs route 911 and E911 calls to local PSAPs, we permit PSAPs at their discretion to indicate they do not wish to receive 911 calls. We note that CIS operators are often required to pass through 911 and E911 calls, either by contracts with wireless provider lessors or pursuant to a state's requirements, and believe the local PSAPs are in the best position to determine emergency call procedures in the public interest.

49. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. In fact, the revisions adopted by the Commission should benefit small entities by reducing certain administrative burdens while simultaneously giving the flexibility necessary to facilitate the deployment of CIS to correctional facilities nationwide.

**F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

50. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities."<sup>479</sup>

51. In order to minimize the economic impact on small entities, the rules we adopt today provide for streamlined leasing and STA application and notification processes, limited notification requirements, and flexible standards for lease negotiations and contractual obligations. While we considered several other proposals in the record that may have resulted in greater compliance burdens on small entities, as described below, we strike a balance between achieving our goals of combatting contraband wireless devices in correctional facilities and minimizing the costs and regulatory burdens of the rules we adopt today.

52. First, by adopting the 911 and E911 requirements for CISs subject to the discretion of PSAPs, we provide flexibility and avoid unnecessary burdens on CIS operators to deliver emergency calls

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<sup>479</sup> 5 U.S.C. § 603(c)(1)-(4).

where PSAPs would rather they be blocked.

53. Second, we take steps to limit the economic impact of the requirement that CMRS providers provide advance notification to their CIS lessees by limiting the changes requiring notification to: (1) additions of new frequency bands to service offerings, and (2) deployment of new air interface technologies. While we considered a proposal in the record requiring CMRS providers to notify managed access system operators or prison administrators in advance of any network changes likely to impact the managed access system and negotiate in good faith on the implementation timing of the change, we acknowledge that any carrier notification requirement must not be overly burdensome or costly. In weighing the potential costs and public interest benefits of this requirement, we decline to adopt further notification requirements at this time and seek comment on whether to broaden the scope of the requirement at a later date. In this proceeding we also considered requiring managed access operators to provide notification to households and businesses in the vicinity of the correctional facility at which a managed access system is installed. However, in light of our goal to expedite the deployment of technological solutions to combat the use of contraband wireless devices, not to impose unnecessary barriers to CIS deployment, we found there was not sufficient justification for imposing a potentially costly notification requirement and declined to adopt such a rule.

54. Finally, in order to assist CIS operators and CMRS licensees, particularly small entities with limited resources to devote to compliance with regulatory obligations, today's *Order* announces the Commission's intention to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson's duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, and resolving issues that may arise during the leasing process. The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities. With this appointment, we ensure continued focus on this important public safety issue and solidify our commitment to combating the problem.

#### **G. Report to Congress**

55. The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>480</sup> In addition, the Commission will send a copy of this *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>481</sup>

56. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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<sup>480</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>481</sup> See 5 U.S.C. § 604(b).

## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>482</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking (Further Notice)*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>483</sup> In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>484</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The rules proposed in the *Further Notice* are necessary to provide additional tools to combat contraband wireless devices in correctional facilities. As discussed in the *Report and Order (Order)*, inmates can use contraband wireless devices order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity. The use of contraband wireless devices by inmates has grown within the U.S. prison system parallel to the growth of wireless device use by the general public. For example, GAO reports that the number of confiscated cell phones has grown from 1,774 in 2008 to 3,684 in 2010. A test of wireless device interdiction technology in two California State prisons detected over 25,000 unauthorized communication attempts over an 11 day period in 2011. Further, an interdiction system permanently installed in a Mississippi correctional facility reportedly blocked 325,000 communications attempts in the first month of operation, and as of February 2012, had blocked over 2 million communications attempts. It is clear that inmate possession of wireless devices is a serious threat to the safety and welfare of correctional facility employees and the general public.

3. The proposed rules seek to combat contraband phone use by mandating termination of service to devices identified by Contraband Interdiction Systems (CISs), which were covered by lease streamlining rules in the *Order*. The Commission proposes to require commercial mobile radio service (CMRS) providers to disable a contraband wireless devices found by a CIS to be in correctional facilities pursuant to a qualifying request from an authorized party. Currently, CISs require physical interdiction to disable a found unauthorized wireless device. This proposal would create a process through which a correctional facility administrator could transmit identifying information of detected unauthorized wireless devices to the appropriate CMRS provider, which would then disable to the device.

4. The proposed process includes a required CIS eligibility determination to ensure the systems satisfy minimum performance standards, appropriate means of requesting the disabling, and specifics regarding the required carrier response. The Commission intends to make public all eligible CISs to facilitate expeditious lease transactions for those seeking to deploy systems resulting in requests for contraband wireless device disabling. In order to be eligible, a CIS operator must demonstrate the following: (1) the CIS has appropriate equipment authorization pursuant to Commission rules; (2) the CIS is designed and will be configured to locate devices solely within a correctional facility, secure and protect the collected information, and avoid interfering with emergency 911 calls; and (3) the methodology to be used in analyzing data collected by the CIS is sufficiently robust to provide a high degree of certainty that the particular wireless device is in fact located within a correctional facility. The Commission seeks comment on these standards, and whether additional standards may be required for accuracy.

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<sup>482</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>483</sup> See 5 U.S.C. § 603(a).

<sup>484</sup> See *id.*

5. To ensure that an authorized party provides the information necessary for a wireless provider to disable the contraband wireless devices, the Commission proposes to require that CMRS licensees comply with the proposed disabling process upon receipt of a qualifying request made in writing and transmitted via a verifiable transmission mechanism. The Commission seeks comment on whether the qualifying request must be transmitted (1) by the Commission upon the request of a Designated Correctional Facility Official (DCFO), which we propose to define as a state or local official responsible for the facility where the contraband device is located; or (2) by the DCFO. In order for the request to disable a contraband device to be a qualifying request, the Commission proposes that the DCFO must certify in the qualifying request that: (1) an eligible CIS was used in the correctional facility, and include evidence of such eligibility; (2) the CIS is authorized for operation through a license or Commission approved lease agreement, referencing the applicable ULS identifying information; (3) the DCFO has contacted all CMRS licensees providing service in the area of the correctional facility for which it will seek device disabling in order to establish a verifiable transmission mechanism for making qualifying requests and for receiving notifications from the licensee; and (4) it has substantial evidence that the contraband wireless device was used in the correctional facility, and that such use was observed within the 30 day period immediately prior to the date of submitting the request. The Commission seeks comment on these requirements and any methods to facilitate interaction between the authorized party and the CMRS licensees during design, deployment, and testing of CISs.

6. In this *Further Notice*, the Commission proposes that a qualifying request must include specific identifying information regarding the device and the correctional facility. Importantly, the Commission proposes that the request must include device identifiers sufficient to uniquely describe the device in question and the licensee providing CMRS service to the device. With regard to device identifiers, the Commission seeks specific comment on whether other details are necessary in addition to identifiers that uniquely describe the specific devices, such as make and model of the device or the mode of device utilization at the time of detection. The *Further Notice* also proposes that a qualifying request must also include correctional facility identifiers, including the name of the correctional facility, the street address of the correctional facility, the latitude and longitude coordinates sufficient to describe the boundaries of the correctional facility, and the call signs of the Commission licenses and/or leases authorizing the CIS.

7. In proposing rules mandating that CMRS licensees disable contraband wireless devices upon receiving a qualifying request, the Commission recognizes the need to safeguard legitimate devices from being disabled to the greatest extent possible. Accordingly, the *Further Notice* seeks comment on the appropriate steps, if any, the CMRS licensee must take to verify the information received, whether customer outreach should be part of the process, and the time frame within which the steps must be taken. The Commission proposes to require that, if the DCFO is the authorized party transmitting the qualifying request to the CMRS licensees, then the CMRS licensee must provide a point of contact suitable for receiving qualifying requests to disable contraband wireless devices in correctional facilities. With regard to carrier investigations, the Commission seeks comment on a range of possible options, including requiring the carrier to immediately disable the wireless devices upon receipt of a qualifying request from an authorized party without conducting any investigation; requiring the carrier to conduct brief research of readily accessible data prior to disabling or to respond to a series of Commission questions regarding the status of the wireless device to determine its status; or requiring the carrier to use all data at its disposal prior to disabling. The *Further Notice* seeks comment on all aspects of the disabling process regarding verification of disabling requests, particularly the costs and benefits to the wireless providers, CIS operators, and the correctional facilities.

8. With respect to the appropriate timeframe for disabling a contraband wireless device, or rejecting the request if appropriate, the Commission seeks comment on various options, each of which might be impacted by the range of potential levels of carrier investigation in independently verifying a disabling request and customer outreach. The Commission believes that appropriate timeframes should strike a reasonable balance between the need for prompt action to disable a contraband device potentially used for criminal purposes, and licensee resources required to either verify and implement, or reasonably

reject a qualifying request.

9. While the Commission believes that the proposed CIS eligibility process discussed above will substantially ensure that only contraband wireless devices located within correctional facilities are identified for carrier disabling, the Commission recognizes that in limited instances a non-contraband device in close proximity to a correctional facility might be mistakenly identified as contraband and disabled in error. In the event of such an error, the Commission seeks comment on what timely and efficient methods wireless providers can implement to minimize customer inconvenience to resume service to the device.

10. The Commission has considered various alternatives, including a court order process or a voluntary carrier termination process, on which it seeks comment. The Commission sought comment on a proposal seeking adoption of a rule to insulate carriers from any legal liability for wrongful termination. The Commission noted that wireless carriers' current end user licensing agreements may already protect the carriers, but seeks further comment on this proposal, and on whether the Commission should create a safe harbor by rule for wireless providers that comply with the federal process for disabling phones in correctional facilities. The Commission also seeks comment on whether and to what extent a system used to request wireless provider disabling of a contraband wireless device pursuant to a Commission rule raises issues under Title 18 of the U.S. Code or Section 705 of the Communications Act, as amended (Act), that may be different from those raised by MAS implementation. The Commission does not find that the record supports the position that Section 222 of the Act would prohibit a carrier from complying with the proposed rule mandating a disabling process, but seeks comment on the issue to the extent commenters maintain a contrary view.

11. In the alternative, the Commission seeks comment on additional technological means of combating contraband devices which it has not proposed in the *Further Notice*, including imposition of quiet zones around correctional facilities, network-based solutions, and incorporation of beacon technology into wireless handsets that would provide a software method of disabling functionality within correctional facilities.

12. All proposed rules adopted in today's *Further Notice* are set forth in Appendix B (Proposed Rules).

## **B. Legal Basis**

13. The legal basis for any action that may be taken pursuant to the *Notice* is contained in sections 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>485</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>486</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.<sup>487</sup> A small-business

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<sup>485</sup> 5 U.S.C. § 603(b)(3).

<sup>486</sup> 5 U.S.C. § 601(6).

<sup>487</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>488</sup>

15. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>489</sup>

16. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>490</sup> According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.<sup>491</sup> Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.<sup>492</sup> Thus, under this size standard, the majority of firms can be considered small.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>493</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>494</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>495</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

18. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>496</sup> According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>497</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>498</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

19. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>499</sup> According to Commission data, 881 carriers have reported that they are engaged in the

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<sup>488</sup> 15 U.S.C. § 632.

<sup>489</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advo/stats/sbfaq.pdf> (accessed Dec. 2010).

<sup>490</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>491</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

<sup>492</sup> See *id.*

<sup>493</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>494</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>495</sup> See *id.*

<sup>496</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>497</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>498</sup> See *id.*

<sup>499</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

provision of toll resale services.<sup>500</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>501</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

20. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>502</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>503</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>504</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Notice*.

21. *800 and 800-Like Service Subscribers.*<sup>505</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>506</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>507</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>508</sup> We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

22. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>509</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>510</sup> Under the present and prior categories, the SBA has deemed a wireless business

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<sup>500</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>501</sup> See *id.*

<sup>502</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>503</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>504</sup> See *id.*

<sup>505</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>506</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>507</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>508</sup> See *id.*

<sup>509</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>510</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.



to be small if it has 1,500 or fewer employees.<sup>511</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>512</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>513</sup> Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>514</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>515</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

23. Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>516</sup> For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>517</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>518</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>519</sup> In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.<sup>520</sup> There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.<sup>521</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F

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<sup>511</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>512</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>513</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>514</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>515</sup> See *id.*

<sup>516</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

<sup>517</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

<sup>518</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

<sup>519</sup> See FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

<sup>520</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>521</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

(continued...)

Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.<sup>522</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.<sup>523</sup> Of the 14 winning bidders, six were designated entities.<sup>524</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>525</sup>

24. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.<sup>526</sup> This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.<sup>527</sup> Four winning bidders that identified themselves as very small businesses won 17 licenses.<sup>528</sup> Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

25. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>529</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>530</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.<sup>531</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction

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<sup>522</sup> See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>523</sup> See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>524</sup> *Id.*

<sup>525</sup> See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) (“AWS-1 and Broadband PCS Procedures Public Notice”).

<sup>526</sup> See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

<sup>527</sup> *Id.* at 23 FCC Rcd at 7521-22.

<sup>528</sup> See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749 (2008).

<sup>529</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>530</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>531</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

(continued....)

was completed in 1996.<sup>532</sup> Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.<sup>533</sup> The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>534</sup> A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>535</sup>

26. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>536</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>537</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

27. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.<sup>538</sup> We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

28. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>539</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>540</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>541</sup> Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross

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<sup>532</sup> “FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996,” *Public Notice*, 11 FCC Rcd 18599 (WTB 1996).

<sup>533</sup> *Id.*

<sup>534</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 11 FCC Rcd 18,637 (WTB 1996).

<sup>535</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>536</sup> See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (WTB 2000).

<sup>537</sup> See “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

<sup>538</sup> See generally 13 C.F.R. § 121.201, NAICS code 517210.

<sup>539</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52-59 Report and Order*).

<sup>540</sup> See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88 para. 172.

<sup>541</sup> See *id.*

revenues that are not more than \$3 million for the preceding three years.<sup>542</sup> The SBA approved these small size standards.<sup>543</sup> The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.<sup>544</sup> Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>545</sup> The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>546</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>547</sup> In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.<sup>548</sup>

29. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.<sup>549</sup> The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.<sup>550</sup> An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.<sup>551</sup> Twenty winning bidders claimed small business status (those with attributable average annual

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<sup>542</sup> See *id.* at 1088 para. 173.

<sup>543</sup> See *Alvarez Letter 1999*.

<sup>544</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>545</sup> *Id.*

<sup>546</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>547</sup> See *id.*

<sup>548</sup> “Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60, Down Payments due August 19, 2005, FCC Forms 601 and 602 due August 19, 2005, Final Payment due September 2, 2005, Ten-Day Petition to Deny Period,” Public Notice, 20 FCC Rcd 13424 (WTB 2005).

<sup>549</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289 (2007) (700 MHz Second Report and Order).*

<sup>550</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Second Report and Order, 22 FCC Rcd 15289 (2007) (“700 MHz Second Report and Order”).*

<sup>551</sup> See *Auction of 700 MHz Band Licenses Closes, Public Notice, 23 FCC Rcd 4572 (WTB 2008)*.

gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.<sup>552</sup>

30. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.<sup>553</sup> In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.<sup>554</sup> Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

31. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.<sup>555</sup> The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.<sup>556</sup> Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.<sup>557</sup>

32. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>558</sup> For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.<sup>559</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>560</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the *Notice*.

33. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-

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<sup>552</sup> See “Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92, Down Payments and FCC Forms 601 and 602 Due August 11, 2011, Final Payments Due August 25, 2011, Ten-Day Petition to Deny Period,” *Public Notice*, 26 FCC Rcd 10,494 (WTB 2011).

<sup>553</sup> 700 MHz Second Report and Order, 22 FCC Rcd 15,289.

<sup>554</sup> See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (2008).

<sup>555</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>556</sup> *Id.*

<sup>557</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>558</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”.

<sup>559</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>560</sup> See *id.* An additional 38 firms had annual receipts of \$25 million or more.

supplied telecommunications connections are also included in this industry.”<sup>561</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>562</sup> Of this total, 2,346 firms had annual receipts of under \$25 million.<sup>563</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

34. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category to include: “establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”<sup>564</sup> In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees.<sup>565</sup> For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments, 4 had 500 or greater employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.<sup>566</sup>

35. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>567</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees.<sup>568</sup> According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 17 had 1,000 or more employees and 27 had 500 or more employees.<sup>569</sup> Thus, under this size standard, the majority of firms can be considered small.

36. *Engineering Services.* The Census Bureau defines this category to include: “establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems.”<sup>570</sup> The SBA deems engineering services firms to be small if they have \$4.5 million or less in annual receipts,

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<sup>561</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications”, <http://www.census.gov/naics/2007/def/ND517919.HTM>.

<sup>562</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>563</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

<sup>564</sup> U.S. Census Bureau, 2007 NAICS Definitions, 334290 Other communications equipment manufacturing, <http://www.census.gov/econ/industry/def/d334290.htm>.

<sup>565</sup> 13 C.F.R. 121.201, NAICS Code 334220.

<sup>566</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>567</sup> U.S. Census Bureau, 2007 NAICS Definition: 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007%20NAICS%20Search>.

<sup>568</sup> 13 C.F.R. § 121.201, NAICS Code 334220.

<sup>569</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>570</sup> U.S. Census Bureau, 2007 NAICS Definitions: 541330 Engineering Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=541330&search=2007%20NAICS%20Search>.

except military and aerospace equipment and military weapons engineering establishments are deemed small if they have \$27 million or less in annual receipts.<sup>571</sup> According to Census Bureau data for 2007, there were 58,391 establishments in this category that operated the full year. Of the 58,391 establishments, 5,943 had \$5 million or greater in receipts and 2,892 had \$10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.<sup>572</sup>

37. *Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing.* The Census Bureau defines this category to include “establishments primarily engaged in manufacturing direction, navigation, guidance, aeronautical, and nautical systems and instruments.”<sup>573</sup> The SBA deems Search, Detection, Navigation, Guidance, Aeronautical, and Nautical and Instrument Manufacturing firms to be small if they have 750 or fewer employees.<sup>574</sup> According to Census Bureau data for 2007, there were 647 establishments in operation in that year. Of the 647 establishments, 36 had 1,000 or more employees, and 50 had 500 or more employees. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>575</sup>

38. *Security Guards and Patrol Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing guard and patrol services.”<sup>576</sup> The SBA deems security guards and patrol services firms to be small if they have \$18.5 million or less in annual receipts.<sup>577</sup> According to Census Bureau data for 2007, there were 9,198 establishments in operation the full year. Of the 9,198 establishments, 355 had greater than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>578</sup>

39. *All Other Support Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing day-to-day business and other organizations support services.”<sup>579</sup> The SBA deems all other support services firms to be small if they have \$7 million or less in annual receipts.<sup>580</sup> According to Census Bureau data for 2007, there were 14,539 establishments in operation the full year. Of the 14,539 establishments, 273 had \$10 million or more in annual receipts, and 639 had \$5 million or greater in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>581</sup>

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance**

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<sup>571</sup> 13 C.F.R. § 121.201, NAICS code 541330.

<sup>572</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-ds\\_name=EC0754SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0754SSSZ1&-_lang=en).

<sup>573</sup> U.S. Census Bureau, 2007 NAICS Definition: 334511 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334511&search=2007%20NAICS%20Search>.

<sup>574</sup> 13 C.F.R. § 121.201, NAICS code 334511.

<sup>575</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>576</sup> U.S. Census Bureau, 2007 NAICS Definition: 561612 Security Guards and Patrol Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561612&search=2007%20NAICS%20Search>

<sup>577</sup> 13 C.F.R. § 121.201, NAICS code 561612.

<sup>578</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0756SSSZ1&-_lang=en).

<sup>579</sup> U.S. Census Bureau, 2007 NAICS Definition: 561990 All Other Support Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561990&search=2007%20NAICS%20Search>.

<sup>580</sup> 13 C.F.R. § 121.201, NAICS code 561990.

<sup>581</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=1000&-ds_name=EC0756SSSZ1&-_lang=en).

### Requirements for Small Entities

40. In this *Further Notice*, the Commission seeks public comment on rule changes to improve the viability of technologies used to combat contraband wireless devices in correctional facilities. The rules are prospective in that they only apply if an entity avails itself of managed access or detection technologies. There are two classes of small entities that may be impacted; providers of wireless services, and providers or operators of managed access or detection systems used in correctional facilities.

41. For small entities that are providers of wireless services and enter into lease arrangements with CIS operators, the rules proposed today would require compliance with the proposed disabling process upon receipt of a qualifying request. In order to receive qualifying requests, the proposed rules would require CMRS licensees who enter into lease arrangements with CIS operators to have a verifiable transmittal mechanism in place and, upon request, provide a DCFO with a point of contact suitable for receiving qualifying requests. We note that some carriers may already have such secure portals in place for receipt of similar requests. The costs of complying with the proposed disabling process will vary depending on the level of investigation required of carriers upon receiving a qualifying request. The Commission seeks comment on this issue, but notes that several carriers already have internal procedures for disabling contraband wireless devices pursuant to court orders, which could be modified to accommodate the proposed disabling process. Nevertheless, these requirements will likely require the allocation of resources to tailor internal processes, including some level of additional staffing necessary to meet the obligations under this requirement.

42. The proposed rules also contemplate the option of requiring CMRS licensees to perform varying levels of customer outreach upon receiving a qualifying request, or after disabling a contraband wireless device. The Commission seeks comment on the costs and benefits of this proposal, but notes carriers may already have mechanisms in place for customer outreach.

43. For small entities operating CISs at correctional facilities, the rules proposed in today's *Further Notice* seek to streamline the process for identification, notification, and disabling of contraband devices to the greatest extent possible, while also ensuring the accuracy, security, and efficiency of such a process. Therefore, the rules proposed today would require CIS operators to be deemed eligible and provide various pieces of required information along with a qualifying request for disabling a contraband device to the wireless carriers. Specifically, in order to be eligible, a CIS operator must demonstrate the following: (1) the CIS has appropriate equipment authorization pursuant to Commission rules; (2) the CIS is designed and will be configured to locate devices solely within a correctional facility, secure and protect the collected information, and avoid interfering with emergency 911 calls; and (3) the methodology to be used in analyzing data collected by the CIS is sufficiently robust to provide a high degree of certainty that the particular wireless device is in fact located within a correctional facility.

44. The proposed eligibility process would apply equally to all CIS operators, irrespective of size. We note that a mandatory process for disabling contraband wireless devices identified using detection systems does not currently exist, and, without adoption the process proposed in today's *Further Notice*, is subject to the discretion of wireless carriers to voluntarily disable devices. It is possible that an outgrowth of the questions asked and responses received could result in additional requirements for being deemed an eligible CIS, submitting qualifying requests, and disabling contraband devices. This may also require some level of recordkeeping to ensure that contraband wireless devices, and not legitimate devices, are disabled. To the extent the rules do impose these requirements, they will be necessary to ensure that legitimate wireless users are not impacted by the operation of CISs, which should be the minimum performance objective for any detection system. Therefore, while these requirements may impose some compliance or recordkeeping obligations, they are a necessary predicate for the operation of a detection system.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

45. The RFA requires an agency to describe any significant, specifically small business,



alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.”<sup>582</sup>

46. First, in this *Further Notice*, the Commission contemplates the possibility that the obligations contained in the proposed rules will create additional compliance costs on CMRS licensees and CIS operators, both large and small. However, in proposing these rules, the Commission seeks comment on the specific criteria and timetables that should be required, and the costs and benefits associated with those proposals in order to facilitate informed decisions in the final rules. Specifically, the Commission considers a range of timeframes in which CMRS licensees will be required to respond to qualifying requests and seeks comment on the resource and staff demands associated with those timeframes. With respect to the demands of the proposed rules on CIS operators, the *Further Notice* considers a range of certifications and necessary information to be included with qualifying requests, and seeks comment on which pieces of information are important to accurately identify contraband wireless devices. Commenters are asked whether small entities face any special or unique issues with respect to terminating service to devices, and whether they would require additional time to take such action. In doing so, the Commission seeks to ensure the accuracy, security, and efficiency of the identification and disabling process, while also minimizing compliance burdens to the greatest extent possible.

47. Second, in order to clarify and simplify compliance and reporting requirements under the proposed rules for small entities, the Commission intends to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson’s duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, and resolving issues that may arise during the leasing process. The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities. The appointment of an ombudsperson provides an important resource for small entities to understand and comply with the requirements contained in the proposed rules.

48. While today’s *Further Notice* proposes to require that CISs be deemed eligible prior to making a qualifying request, the Commission does not directly require or propose to require any specific design standard. Instead, the Commission seeks comment on the elements of detection systems and identification methods that contribute to the accuracy and reliability of a particular CIS. The *Further Notice* asks whether the standard should differ between rural and urban areas, or between large and small detection system providers or operators.

49. Finally, the *Further Notice* does not propose any exemption for small entities. The Commission finds an overriding public interest in preventing the illicit use of contraband wireless devices by prisoners to perpetuate criminal enterprises. The proposed CIS eligibility requirement is vital to the accuracy and reliability of the information ultimately used to disable contraband wireless devices, regardless of the size of the entity obtaining that information. Further, to the extent that a small entity could be exempt from the proposed disabling requirement, it would reduce the overall effectiveness of a CIS. If inmates discover that a wireless provider whose service area includes the correctional facility does not disable contraband wireless devices within the facility, inmates will accordingly use only that service. Therefore, while the *Further Notice* proposes alternative considerations for the overall identification and disabling process to accommodate the needs and resources of small entities, an exemption would be contrary to the Commission’s overarching goal of combatting contraband wireless devices in wireless facilities.

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<sup>582</sup> 5 U.S.C. § 603(c)(1)-(4).

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

50. The *Further Notice* seeks comment on the application and relevance of Sections 705 and 222 of the Act and Title 18 of the U.S. Code.

51. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Further Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**APPENDIX E**  
**List of Commenters**

**NPRM Comments:**

AirPatrol Corporation  
The Alarm Industry Communications Committee (AICC)  
American Correctional Association (ACA)  
AT&T Services, Inc. (AT&T)  
The Boeing Company (Boeing)  
State of California Department of Corrections and Rehabilitation (CDCR)  
CellAntenna Corporation (CellAntenna)  
CellBlox, Inc. (CellBlox)  
CellSafe LLC. (CellSafe)  
CTIA – The Wireless Association (CTIA)  
Delaware Department of Corrections (DDOC)  
Florida Department of Corrections (FDOC)  
The GEO Group, Inc. (GEO)  
State of Indiana Department of Corrections (IDOC)  
Kern County Sheriff’s Office  
Kings County Sheriff  
Marcus Spectrum Solutions LLC (MSS)  
Maryland Department of Public Safety and Correctional Services (MDPSCS)  
McMinn County Sheriff’s Office  
Minnesota Department of Corrections (MNDOC)  
Mississippi Department of Corrections (MSDOC)  
National Sheriffs’ Association (NSA)  
NENA: The 9-1-1 Association (NENA)  
Network Communications International Corp. (NCIC)  
NTCH, Inc. (NTCH)  
Oklahoma Corrections Professionals  
Palm Beach County Sheriff’s Office  
Securus Technologies, Inc. (Securus)

ShawnTech Communications, Inc. (ShawnTech)  
Sierra Nevada Corporation  
St. Mary Parish Sheriff Office  
Tecore Networks (Tecore)  
Texas Department of Criminal Justice  
Try Safety First, Inc. (Try Safety)  
Vanu Cellular Supression, Inc. (Vanu)  
Verizon Wireless (Verizon)

**NPRM Reply Comments:**

American Correctional Association (ACA)  
American Jail Association (AJA)  
AT&T Services, Inc. (AT&T)  
The Boeing Company (Boeing)  
CellAntenna Corporation (CellAntenna)  
CTIA – The Wireless Association (CTIA)  
Global Tel\*Link Corporation (GTL)  
Triple Dragon – U.S., Inc. (Triple Dragon)  
Verizon Wireless (Verizon)

**NPRM Ex Parte Letters:**

American Correctional Association (ACA)  
AT&T Services, Inc. (AT&T)  
CellAntenna Corporation (CellAntenna)  
CellBlox Acquisitions, LLC (CellBlox)  
CTIA – The Wireless Association (CTIA)  
Global Tel\*Link Corporation (GTL)  
Human Rights Defense Center  
National Sheriffs' Association (NSA)  
Prelude Development Company, Inc.  
ShawnTech Communications, Inc. (ShawnTech)  
Tecore Networks (Tecore)

Try Safety First, Inc. (Try Safety)

Wright Petitioners, Prison Policy Initiative, New Jersey Advocates for Immigrant Detainees, United Church of Christ, OC Inc. (collectively, ICS Advocates)