

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

In the Matter of)
)
Amendments To Harmonize and Streamline Part 20) WT Docket No. 16-240
of the Commission’s Rules Concerning)
Requirements for Licensees To Overcome a CMRS)
Presumption)

REPORT AND ORDER

Adopted: December 14, 2017

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By the Commission: Chairman Pai and Commissioner Carr issuing separate statements; Commissioner Clyburn dissenting and issuing a statement.

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I. INTRODUCTION

1. In this Report and Order, we update, harmonize, and streamline our regulations regarding the classification of commercial and private mobile radio services, primarily by eliminating Sections 20.7 and 20.9 of the Commission’s rules.¹ This action is part of our continuing effort to remove provisions that we find outdated, unnecessary, or both. Sections 20.7 and 20.9 of the Commission’s rules list various

¹ 47 U.S.C. §§ 20.7, 20.9.

services or subservices that the Commission had classified as “mobile services” (in Section 20.7) and determined to be “commercial mobile radio services” (CMRS) (in Section 20.9), in accordance with the definitions set forth in the Communications Act.² These rules also establish in certain instances a presumption that some services are private mobile radio services (PMRS), and set out a process by which that presumption can be rebutted.

2. Adopted more than twenty years ago, when the Commission’s rules for particular spectrum bands typically contemplated distinct wireless services in each band, the existing approach of Sections 20.7 and 20.9 is not consistent with our current approach of flexible use licensing, which provides licensees with the ability to determine the types of services they provide subject to technical rules targeted to addressing potential interference issues. Licensees in frequency bands that accommodate flexible use are free to, and do, provide a variety of services. In addition, Sections 20.7 and 20.9 do not even address a number of frequency bands that have been authorized for and are currently used to provide mobile service or CMRS today. Based on the record, we conclude that elimination of these rules is the best course, as it will reduce disparate regulatory treatment of similar services in different frequency bands. For instance, in cases where the service-specific rules provide for flexible use, entities that desire to operate on a non-CMRS basis in a spectrum band specified by Section 20.9 as CMRS will no longer have to file waiver requests or certifications, thereby reducing administrative burdens and minimizing unnecessary processing delays.

3. These changes also will eliminate unnecessary rules, increasing service providers’ flexibility to offer a variety of services rapidly in response to market and consumer needs in these bands, similar to other service providers in other bands. Nothing we do here changes our interpretation of the statutory definitions of “commercial mobile service,” “private mobile service,” or “mobile service” in the Act.³ Our elimination of Sections 20.7 and 20.9 and our changes to definitions contained in Section 20.3 should not be construed as a change in the Commission’s interpretation of the statutory standards.⁴ Nor do any of our revisions change the underlying regulatory obligations associated with the provision of CMRS or PMRS services.

II. BACKGROUND

4. The Commission adopted Sections 20.7 and 20.9 in 1994 as part of its implementation of Sections 3(n) and 332 of the Communications Act,⁵ which Congress amended in the Omnibus Budget Reconciliation Act of 1993 (OBRA).⁶ Congress, seeking to bring mobile services that were similar in nature under a consistent regulatory framework, created the statutory classifications of “commercial mobile services” and “private mobile services” (referred to in Commission rules as commercial mobile radio service and private mobile radio service, respectively).⁷ The Communications Act defines

² See 47 U.S.C. §§ 153(33), 332(d)(1); 47 C.F.R. §§ 20.3, 20.7, 20.9.

³ See, e.g., 47 U.S.C. §§ 153(33), 332(d).

⁴ See, e.g., *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*); *Amendment of the Commission’s Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965, 8985, para. 48. (1996); *Amendment of the Commission’s Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, Second Report and Order and Order on Reconsideration, 15 FCC Rcd 14680, 14684, para. 9, 14685-86, para. 12 (2000).

⁵ 47 U.S.C. §§ 153, 332.

⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993) (codified at 47 U.S.C. § 332) (1993 OBRA).

⁷ See *CMRS Second Report and Order*, 9 FCC Rcd at 1418, para. 13 (citing H.R. Rep. No. 103-213, at 494 (1993), reprinted in 1993 U.S.C.A.N. 1088, 1185 (Conference Report)).

commercial mobile service as “any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public[.]”⁸ “Private mobile service” is defined in the negative as “any mobile service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service[.]”⁹ In the *CMRS Second Report and Order*, the Commission mirrored these definitions in Section 20.3 of its rules.¹⁰ Thus, Section 20.3 defines “commercial mobile radio service” as “[a] mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) [a]n interconnected service; and (3) [a]vailable to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) [t]he functional equivalent of such a mobile service described in paragraph (a) of this section”¹¹ “Private mobile radio service” is defined as “[a] mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service.”¹² Similarly, the Commission largely mirrored the statutory definition of “mobile services” in its definition in the rules.¹³

5. The Commission, in adopting Sections 20.7 and 20.9, conducted an extensive review of the 1993 OBRA, its legislative history, and developments in the regulation of wireless services.¹⁴ The Commission noted that Congress “replaced the common carrier and private radio definitions that evolved under the prior version of Section 332 of the Act with two newly defined categories of mobile services: commercial mobile radio service (CMRS) and private mobile radio service (PMRS),” and “replaced traditional regulation of mobile services with an approach that brings all mobile service providers under a comprehensive, consistent regulatory framework and gives the Commission flexibility to establish

⁸ 47 U.S.C. § 332(d)(1).

⁹ 47 U.S.C. § 332(d)(3).

¹⁰ See *CMRS Second Report and Order*, 9 FCC Rcd at 1516, Appx. A (Section 20.3 Definitions).

¹¹ 47 CFR § 20.3, definition of Commercial Mobile Radio Service.

¹² 47 CFR § 20.3, definition of Private Mobile Radio Service. Section 20.3 specifies several services that are PMRS, including not-for-profit land mobile radio and paging services that serve a licensee’s internal communications needs as defined in Part 90 of the rules; mobile radio service offered to a restricted class of users, such as Public Safety Radio Pool and Radiolocation service; 220-222 MHz land mobile service and Automatic Vehicle systems (Part 90) that do not offer interconnected service or that are not-for-profit; Personal Radio Services (Part 95); Maritime Service Stations, excluding Public Coast stations (Part 80); and Aviation Service Stations (Part 87). *Id.*

¹³ Compare 47 U.S.C. § 153(33) (defining mobile service as “a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment of the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding”) with 47 CFR § 20.3 (defining mobile service as “a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (a) Both one-way and two-way radio communications services; (b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (c) Any service for which a license is required in a personal communications service under part 24 of this chapter”).

¹⁴ See *CMRS Second Report and Order*, 9 FCC Rcd at 1414-19, paras. 3-17.

appropriate levels of regulation for mobile radio service providers.”¹⁵ Two Congressional objectives appeared to drive these statutory changes: (1) ensuring that “similar [mobile] services would be subject to consistent regulatory classification[,]” and (2) establishing and administering for CMRS providers “an appropriate level of regulation.”¹⁶

6. Applying the purpose of the legislation to include all existing mobile services within the ambit of Section 332 and in view of the goal of achieving regulatory symmetry, the Commission stated that all existing mobile services will be included within the ambit of Section 332 as well as all auxiliary services and ancillary fixed communications offered by such service providers.¹⁷ In addition, the Commission stated that “unlicensed PCS and Part 15 devices will not be included under the definition of mobile services,”¹⁸ but other unlicensed services meeting the definition of CMRS, such as the resale of CMRS, are mobile services within the meaning of Sections 3(n) and 332 of the Communications Act.¹⁹ Section 20.7 memorialized these and listed the existing mobile services.

7. In addition, applying the statutory criteria to the existing common carrier mobile services at the time, the Commission identified in Section 20.9(a) thirteen specific mobile service bands (or subsets thereof)²⁰ that met the definition of CMRS and would be treated as common carrier services.²¹ At the time, in the wake of the 1993 OBRA, the list served as a clear, easily applied tool for implementing the new CMRS classification and creating certainty about which regulatory regime would apply to a given license band. The primary reason this approach worked well was because many of the service-specific wireless rule parts drew clear lines between commercial and private operation in terms of service rules, obligations, and usage, and the licensed operations within a given service were often limited by rule either to common or private carriage.²² If a licensee of a service band identified in Section 20.9(a) wished to provide service on a private basis, it would have needed to seek a waiver of Section 20.9(a). Section 20.9(b) identifies three services that are specifically presumed to be CMRS (rather than deemed to be regulated as CMRS in Section 20.9(a)) and prescribes a certification process for overcoming that presumption in cases where the provider intends to operate on a PMRS basis.²³

¹⁵ *CMRS Second Report and Order*, 9 FCC Rcd at 1417, paras. 11-12 (referencing 1993 OBRA, Section 6002(b), and the changes it made to Section 332 of the Act).

¹⁶ *CMRS Second Report and Order*, 9 FCC Rcd at 1418, paras. 13-14 (citing Conference Report at 494).

¹⁷ *CMRS Second Report and Order*, 9 FCC Rcd at 1424, paras. 35-36.

¹⁸ *CMRS Second Report and Order*, 9 FCC Rcd at 1425, para. 37.

¹⁹ *Id.*; 47 CFR § 20.7.

²⁰ The service-specific rules for these mobile service bands are contained in Parts 22, 24, 80, and 90.

²¹ 47 CFR § 20.9(a)(1)-(13). These include: (1) Private Paging (Part 90), with exclusions; (2) Stations that offer Industrial/Business Pool (Section 90.35) eligibles for-profit, interconnected service; (3) Land Mobile Systems on 220-222 MHz (Part 90), with exclusions; (4) Specialized Mobile Radio (SMR) services that provide interconnected service (Part 90); (5) Public Coast Stations (Part 80); (6) Paging and Radiotelephone Service (Part 22); (7) Cellular Radiotelephone Service (Part 22); (8) Air-Ground Radiotelephone Service (Part 22); (9) Offshore Radiotelephone Service (Part 22); (10) Any mobile satellite service involving the provision of commercial mobile radio service directly to end users, with exclusions; (11) Personal Communications Services (Part 24), with exclusions; (12) Mobile operations in the 218-219 MHz Service (Part 95, subpart F) that provide for-profit interconnected service to the public; and (13) For-profit subsidiary communications services transmitted within the FM radio broadcast signal that provide interconnected service (Section 73.295). *Id.*

²² *Cf. CMRS Second Report and Order*, 9 FCC Rcd at 1417-19, paras. 11-17. To the extent the service-specific rules allowed operations that might lift specific usage out of the CMRS (or mobile services) definition, the Commission tailored the Section 20.9 (and 20.7) service descriptions to include only those operations that would meet the CMRS (or mobile services) definition.

²³ 47 CFR § 20.9(b).

8. In crafting the Section 20.9(a) approach, the Commission also noted that Congress was concerned with the “disparate regulatory treatment” that had evolved across services,²⁴ and it observed that Congress’s intent for the Commission to establish consistent regulations was reflected in the statutory requirement that any service that amounted to the “functional equivalent” of CMRS be treated as such, even if it did not meet the strict definition.²⁵ At the same time, the Commission “anticipat[ed] that very few mobile services that do not meet the definition of CMRS will be a close substitute for a [CMRS].”²⁶ Because the Commission expected that the functional equivalency test would be applied only rarely, it decided to create another presumption—i.e., to “presume that a mobile service that does not meet the definition of CMRS is a [PMRS].”²⁷ To rebut that presumption, a challenger to a PMRS claim could file a petition for declaratory ruling attempting to show that the service at issue met the definition of CMRS or was the functional equivalent of CMRS.²⁸ Section 20.9(a)(14) memorializes this presumption and the process for overcoming the presumption.

9. For the services listed in Section 20.9(b), the rules state that service may be provided on a PMRS basis only if the licensee or applicant overcomes the presumption that those services are CMRS through a specific certification process.²⁹ Specifically, Section 20.9(b) requires licensees of, or applicants for, Personal Communications Service (PCS), VHF Public Coast Stations, and Automated Maritime Telecommunications Systems (AMTS) that want to operate on a PMRS basis to include a certification as part of an authorization, modification, transaction, or spectrum leasing application demonstrating that the proposed service does not fall within the definition of CMRS.³⁰ The application is placed on public notice for 30 days, during which interested parties may file petitions to deny.³¹

10. While Section 20.9’s regulatory treatment of certain service bands may well have been a reasonable tool when it was adopted, it was based on assumptions that no longer apply—namely that a licensee would offer a service restricted either to CMRS or PMRS use rather than seek to have the flexibility to operate as both.³² In recent years, the Commission’s spectrum regulation has turned toward a flexible use model that no longer supports this particular treatment embedded in our rules. Section 20.9 was adopted at a time when there were far fewer wireless licensees and services than exist today. Dramatic changes have occurred in the wireless industry since then. Notably, licensees of spectrum bands not identified in Section 20.9 are governed by service-specific rules that afford entities greater flexibility in how operations can be provided and that do not presume them to be CMRS or PMRS.³³

²⁴ See Conference Report at 494 (stating the Conferees’ intent that “similar services are accorded similar regulatory treatment”); *CMRS Second Report and Order*, 9 FCC Rcd at 1413, para. 2 (“This Order reflects the Commission’s efforts to implement the congressional intent of creating regulatory symmetry among similar mobile services.”).

²⁵ See Conference Report at 496; *CMRS Second Report and Order*, 9 FCC Rcd at 1445-47, paras. 76-78.

²⁶ *CMRS Second Report and Order*, 9 FCC Rcd at 1447, para. 79.

²⁷ *CMRS Second Report and Order*, 9 FCC Rcd at 1447, paras. 79-80.

²⁸ 47 CFR § 20.9(a)(14).

²⁹ See *CMRS Second Report and Order*, 9 FCC Rcd at 1461, para 119 (explaining the rationale for presuming PCS to be CMRS and allowing a PCS provider to make a showing that one or more of its services are private via a certification process).

³⁰ 47 CFR § 20.9(b)(1).

³¹ 47 CFR § 20.9(b)(2).

³² *Amendments To Harmonize and Streamline Part 20 of the Commission’s Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption*, WT Docket No. 16-240, Notice of Proposed Rulemaking, 31 FCC Rcd 8470, 8475, para. 14 (2016) (*Notice*).

³³ See 47 CFR § 27.2(a) (“[A] licensee in the frequency bands specified in §27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in §2.106 of this chapter . . .”).

Applicants and licensees in these newer services can select whether they will be providing common carrier service, non-common carrier service, and/or private, internal communications on FCC Form 601 or in other applications.³⁴ Moreover, the continuing demand for PMRS use of spectrum—including spectrum that providers, in the past, had primarily sought for CMRS use—has altered another of the underlying assumptions of Section 20.9(a), i.e., that the demand to operate services referenced in Section 20.9 is primarily a demand to offer such services on a CMRS basis.³⁵

11. In light of the broadened interest in and need for spectrum covered by Section 20.9 by an increased diversity of licensees, the Commission has sought to provide greater flexibility to applicants, licensees, and spectrum lessees³⁶ subject to Section 20.9, but these efforts have nonetheless left some entities with burdens that their counterparts in other spectrum bands do not face. In 2005, for example, the Commission eliminated the restriction that entities must operate as common carriers in order to hold a Part 22 license.³⁷ Despite this change, Part 22 applicants, licensees, and spectrum lessees are still required to seek a waiver of Section 20.9(a) if they plan to operate on a non-CMRS basis. In recent years, applicants, licensees, and spectrum lessees in many services presumed to be CMRS have requested waiver of Section 20.9(a) as part of an initial authorization, modification, transaction, or spectrum leasing application,³⁸ and the inclusion of the waiver request often increases the time it takes the Commission to process the application.³⁹ For example, a paging assignment application in which the assignee includes a waiver request must go on public notice for a minimum of 14 days.⁴⁰ Absent the waiver request, the application otherwise might be subject to overnight grant under our processing rules.⁴¹ Similarly, the Section 20.9(b) process for PCS, VHS Public Coast station services, and AMTS licensees to certify that their proposed operations are not commercial is cumbersome and time-consuming. Applications that include a Section 20.9(b) certification often could be granted on an overnight basis absent Section 20.9(b)'s public notice requirement.⁴²

12. To address these inefficiencies, the Commission in July 2016 released a *Notice of Proposed Rulemaking* recognizing that Section 20.9's approach to the regulatory status of certain bands was not the only way to administer the CMRS/PMRS statutory framework, and seeking comment on whether to eliminate this approach by removing Section 20.9 from its rules.⁴³ The Commission

³⁴ *Notice*, 31 FCC Rcd at 8472, para. 7 & n.19 (citing Universal Licensing System (ULS) Forms 601, 603).

³⁵ For example, state and local governments have sought to use paging frequencies in support of their public safety operations, licensees have sought to provide service to a particular entity like a hospital or school, and commercial businesses have sought to use such spectrum for their own internal operations. *Notice*, 31 FCC Rcd at 8472, para. 6.

³⁶ Our references to spectrum lessees also include spectrum sublessees.

³⁷ *See Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services et al.*, WT Docket No. 03-103 et al., Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4403, 4446-47, paras. 101-103 (2005).

³⁸ Staff reviews waiver requests under the applicable waiver standards. *See* 47 CFR § 1.925.

³⁹ *Notice*, 31 FCC Rcd at 8472-73, para. 8.

⁴⁰ *See* 47 CFR §§ 1.948(j)(2)(i)(C) (disqualifying assignment applications that require waiver of Commission rules from immediate approval procedures); 1.948(j)(1)(iii) (under non-immediate approval procedures, allowing petitions to deny to be filed within 14 days of public notice of the application).

⁴¹ *See* 47 CFR §§ 1.948(j)(2) (detailing immediate approval procedures for certain applications for assignment of authorization or transfer of control); 1.9020(e)(2) (same for certain spectrum manager leasing applications); 1.9030(e)(2) (same for certain long-term *de facto* transfer spectrum leasing applications); 1.9035(e) (same for short-term *de facto* transfer spectrum leasing applications).

⁴² *See Notice*, 31 FCC Rcd at 8473, para. 9 (citing 47 CFR § 1.948(j)(2)).

⁴³ *Notice*, 31 FCC Rcd at 8473, 8475, paras. 10, 14. The *Notice's* proposal to streamline Part 20 is consistent with suggestions received as part of the Commission's process reform efforts. *See Report on FCC Process Reform*, GN

tentatively concluded that doing so would streamline application processing and promote comparable treatment of wireless applicants and licensees operating in different spectrum bands.⁴⁴ The Commission anticipated that this revision of our rules would shorten the processing time for a number of applications and eliminate the obligation of licensees and applicants in the specified Section 20.9 bands to make a showing—even if brief—regarding their intent to operate on a PMRS-basis.⁴⁵ It tentatively concluded that this, in turn, would lead to more efficient and timely use of spectrum, without imposing more regulatory burdens than necessary for the Commission to oversee spectrum usage.⁴⁶ The Commission sought comment on its tentative conclusions and on the costs and benefits of its proposed rule elimination.⁴⁷ Five parties filed comments and two parties filed reply comments in response to the *Notice*, all of which (as described below) generally support elimination of Section 20.9.⁴⁸

13. The Commission also sought comment in the *Notice* on eliminating Section 20.7’s list of certain services that meet the statutory definition of “mobile service” as used in Sections 3(n) and 332 of the Act.⁴⁹ This list is under-inclusive—it does not include all the services that are, in fact, “mobile services” under the statutory language and our Section 20.3 definition.⁵⁰ The Commission tentatively concluded that Section 20.7 no longer serves a useful purpose and stressed that eliminating Section 20.7 would not change the definition of “mobile service” contained in Section 20.3 of the rules.⁵¹

III. STREAMLINING PART 20 OF THE COMMISSION’S RULES

A. Elimination of Section 20.9

1. CMRS Regulatory Treatment

14. We remove Section 20.9 from our rules, eliminating that Section’s approach for determining whether services provided in the specified frequency bands are CMRS. There is unanimous support for this rule change, with every commenter addressing this issue supportive of the Commission removing Section 20.9 in its entirety.⁵² This action is also consistent with our recent steps in the WRS Reform proceeding to harmonize renewal and other regulatory requirements across services and to

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Docket No. 14-25, at 74-75, Objective 5.34 (Staff Working Group, Feb. 14, 2014) (noting that entities classified as CMRS licensees are “generally subject to different and more rigorous regulation” than PMRS licensees, and suggesting that the Bureau “initiate a proceeding recommending changes to harmonize and streamline the rules that allow a licensee to overcome a CMRS presumption”).

⁴⁴ *Notice*, 31 FCC Rcd at 8473, para. 10.

⁴⁵ *Notice*, 31 FCC Rcd at 8474, para. 11.

⁴⁶ *Notice*, 31 FCC Rcd at 8474, para. 11.

⁴⁷ *Notice*, 31 FCC Rcd at 8473, para. 10.

⁴⁸ Commenters include CTIA, Enterprise Wireless Alliance (EWA), Government Wireless Technology & Communications Association (GWTCA), Motorola Solutions, Inc. (MSI), and Nebraska Public Power District (NPPD). Reply commenters are National Public Safety Telecommunications Council (NPSTC) and T-Mobile USA, Inc. (T-Mobile). See WT Docket No. 16-240. We note that EWA conditions its support for eliminating Section 20.9 on the Commission’s grant of EWA’s request for declaratory ruling regarding the regulatory classification and treatment of SMR services that are not interconnected to the public switched telephone network (PSTN). See EWA Comments at 6-15. We find EWA’s declaratory ruling request to be beyond the scope of this proceeding.

⁴⁹ *Notice*, 31 FCC Rcd at 8476, para. 21.

⁵⁰ *Notice*, 31 FCC Rcd at 8476, para. 21.

⁵¹ *Notice*, 31 FCC Rcd at 8476, para. 21.

⁵² See CTIA Comments at 1-4; EWA Comments at 4-5; GWTCA Comments at 2; MSI Comments at 1-2; NPPD Comments at 1; NPSTC Reply Comments at 1, 4; see also T-Mobile Reply Comments at 1 (not directly supporting or opposing the 20.9 elimination, and focusing instead on Section 20.7’s list of “mobile services”).

simplify regulatory processes.⁵³ Going forward, licensees and applicants whose services were subject to Section 20.9 can rely on the relevant definitions in the Communications Act and our rules—which articulate with sufficient clarity what constitutes CMRS and PMRS—to identify the nature of their services in relevant Commission applications.⁵⁴ Akin to their counterparts operating in other frequency bands that already accommodate flexible use, these entities may provide any service that is consistent with the technical rules of the band in which they operate. Licensees will no longer need to seek waivers or submit certifications to the Commission before they can provide non-commercial services; they need only look to the definitions of CMRS and PMRS to determine their regulatory status and proceed accordingly.

15. Eliminating Section 20.9 is consistent with the Commission’s ongoing efforts to facilitate flexible use of spectrum, and will allow licensees to respond more quickly to consumer demand and competitive forces.⁵⁵ As CTIA asserts, elimination of Section 20.9 will “afford[] wireless providers with the flexibility needed to develop and deploy 5G and Internet of Things products and services.”⁵⁶ Moreover, removing Section 20.9 will help eliminate uneven and disparate regulation of wireless applicants and licensees in different spectrum bands.⁵⁷ We find that the public interest is best served by treating similarly situated entities on a more equal, comparable basis. As previously discussed, Congress’s intent in creating the CMRS and PMRS umbrella service definitions was to ensure that similarly situated service providers were operating on the same regulatory footing, and the Commission aimed to effectuate this intent by adopting Section 20.9. But as a result of the changes that have occurred in the preceding two decades, entities operating in frequency bands subject to Section 20.9 are not treated the same as their competitors in other bands. Rather, if they wish to use the spectrum for non-commercial services, this subset of licensees and applicants must file requests for waivers of Section 20.9(a) or certifications that operations are not CMRS under Section 20.9(b), and they must endure delays associated with the required public notice periods, even though the requests and certifications are usually granted on a routine basis. Several commenters highlight how elimination of Section 20.9 will reduce burdens for such entities, enabling them to put their spectrum to efficient use more quickly.⁵⁸

16. We also expect—as many commenters highlight—that removing Section 20.9 will enable service providers to more easily meet the continuing demand for PMRS and other non-traditional CMRS operations that serve the public interest. GWTCa highlights how government entities need more usable spectrum and increasingly have sought to use spectrum subject to Section 20.9, but have had to file waiver requests that “needlessly delay[] the application process, engage[] unnecessarily the Commission’s scarce resources, and cause[] uncertainty on the part of the potential licensees with regard to potential spectrum for operations.”⁵⁹ EWA similarly explains how entities that have been allowed to use spectrum

⁵³ See *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 17-105 (rel. Aug. 3, 2017).

⁵⁴ 47 U.S.C. §§ 153, 332; see also 47 CFR § 20.3.

⁵⁵ CTIA Comments at 4.

⁵⁶ CTIA Comments at 2, 3-4.

⁵⁷ This is consistent with the Commission’s tentative conclusion in the *Notice*, 31 FCC Rcd at 8474, para. 12.

⁵⁸ See CTIA Comments at 1-4; EWA Comments at 4-5; GWTCa Comments at 2; MSI Comments at 1-2; NPPD Comments at 1; NPSTC Reply Comments at 1, 4. In the *Notice*, the Commission specifically asked whether there were other ways to overcome the processing inefficiencies and delays caused by filings, such as by amending Section 20.9 to better address these problems. *Notice*, 31 FCC Rcd at 8475, para 17. No party offers any such alternatives.

⁵⁹ GWTCa Comments at 2; see also NPPD Comments at 1 (asserting that removal of Section 20.9 will “eliminate unnecessary legal costs, uncertainties, and delays incurred by licensees seeking to use Part 22 frequencies for private

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subject to Section 20.9 for PMRS have provided substantial benefits to the public by supporting emergency responders, increasing the efficiency of American industry, and providing efficient local dispatch and commercial services to business and local governments.⁶⁰ We agree that elimination of Section 20.9 will help bring beneficial services to businesses, state and local governments, and the public safety community, while reducing the administrative burdens and processing delays that certain providers of these services currently face.

17. A few commenters caution the Commission that any rule changes should not substantively alter CMRS and PMRS licensees' respective regulatory obligations or expectations regarding their licenses.⁶¹ CTIA similarly asks the Commission to make clear that licensees may continue to provide both CMRS and PMRS, subject to compliance with the regulatory obligations applicable to the operations in question.⁶² Nothing here is intended to substantively change the definitions of CMRS and PMRS in Section 20.3 of our rules, which generally track the statutory definitions and which provide sufficiently clear guidance to enable providers to continue to determine the nature of their services accurately. Nor do we take any action in this Order to change the regulatory obligations that attach to CMRS operations⁶³ or to PMRS operations. Entities may continue to provide both CMRS and PMRS under the same license, to the extent allowed by, and subject to, the statutes, rules, and requirements that otherwise apply to the particular service at issue.

18. As the Commission proposed in the *Notice*,⁶⁴ applicants and licensees that were subject to Section 20.9 and that utilize ULS can inform us in initial, modification, transaction, or spectrum leasing applications whether they seek authorization to provide or use their service for any of the applicable service offerings—"common carrier," "non-common carrier," and/or "private, internal communications"—without any additional showing, as applicants and licensees already do in spectrum bands that already accommodate flexible use. In other words, they can select "non-common carrier" and/or "private, internal communications," as applicable, without needing to include a waiver request or certification to prove that their service is not CMRS. There is no opposition to this approach from commenters. Importantly, this will not place any additional burdens on applicants and licensees. Our rules already permit entities to self-identify their regulatory status but, because of Section 20.9, entities using spectrum in identified frequency bands had to go through the additional administrative processes discussed above. Based on the forgoing, we eliminate the need for them to do so.

(Continued from previous page) _____

internal use"); NPSTC Comments at 4 (arguing that elimination of the CMRS presumption will benefit state and local agencies seeking to obtain spectrum on the secondary market to supplement available public safety channels by reducing the burdens they face and allowing the Commission to process the applications more quickly).

⁶⁰ EWA Comments at 4.

⁶¹ See CTIA Comments at 4-5 (urging the Commission to make affirmative statements that there would be no change in the obligations imposed on entities providing commercial or private mobile radio service, and that elimination of Section 20.9 is narrow and intended to eliminate unnecessary burdens on certain applicants and licensees); NPSTC Comments at 5 (asking the Commission to "ensure that sufficient clarity in the definition of, and requirements for, PMRS and CMRS classifications are maintained"); MSI Comments at 2 (arguing that the Commission should ensure that any rules changes do not have unintended consequences on current licensees); T-Mobile Reply Comments at 1 (agreeing that the Commission should avoid unintended consequences).

⁶² CTIA Comments at 5.

⁶³ As the Commission explained in the *Notice*, such CMRS obligations include, but are not limited to, roaming obligations, provision of E911 services, obligations pursuant to the Communications Assistance for Law Enforcement Act, and compliance with hearing aid compatibility requirements. *Notice*, 31 FCC Rcd at 8477, para. 23 & n.55.

⁶⁴ *Notice*, 31 FCC Rcd at 8473, para. 10 & n.27.

2. PMRS Presumption and Rebuttal Process

19. As discussed above, Section 20.9(a)(14) sets forth a rebuttable presumption that “[a] mobile service that does not meet the definition of commercial mobile radio service is presumed to be a private mobile radio service,”⁶⁵ and it sets out the process for rebutting such a presumption.⁶⁶ This only acts as a presumption, however, with respect to an “interested party’s” challenge to a provider’s *claim* that its service is PMRS, in light of the implicit factual assertion that the service does not meet the definition of CMRS. If the challenger cannot overcome the presumption of the validity of the provider’s claim that its service does not, as a factual matter, meet the Section 20.3 definition of CMRS,⁶⁷ then the PMRS status of the operation at issue has been established as a definitional matter under the rule and statute, and this challenge will fail.⁶⁸

20. In the *Notice*, the Commission observed that the rules do not need to identify service bands that will be treated as CMRS in order to establish a framework within which a provider can claim PMRS status (presumptively or otherwise).⁶⁹ There are other approaches for identifying whether a licensee’s proposed or existing operations should be classified one way or another, such as allowing the licensee, in the first instance, to make that determination with respect to its individualized operations, based on the existing definitions of PMRS and CMRS. The Commission suggested that changes to its approach of using a rebuttable PMRS presumption “may now be warranted based on the development of CMRS and PMRS services and [the Commission’s] experience with the application of the presumption, such as how parties have used it, how often and how successfully it has been challenged, and whether it tends to streamline the licensing processes or encumber them.”⁷⁰ The Commission observed that Section 20.3 of the rules defines CMRS to include mobile services that are the “functional equivalent” of CMRS, and therefore—in combination with other Commission rules and processes—ensures that any service that amounts to the “functional equivalent” of CMRS is treated as such.⁷¹

21. The Commission recognized, however, that elimination of Section 20.9 in its entirety would also include deletion of Section 20.9(a)(14)(ii), which enumerates several factors that the Commission may consider in determining whether a mobile service is the “functional equivalent” of CMRS in cases where an interested party challenges a claim that operations are presumptively classified as PMRS.⁷² The Commission sought comment on whether retaining Section 20.9(a)(14) or any of its subsections would be useful “as a practical and procedural set of guidelines” for both mobile service

⁶⁵ 47 CFR § 20.9(a)(14)(i). This subsection’s reference to the definition of CMRS is stated without limitation and therefore includes a service that is defined as CMRS under either the “(a)” or “(b)” paragraphs of the Section 20.3 definition of CMRS.

⁶⁶ 47 CFR § 20.9(a)(14)(ii).

⁶⁷ Note that this definition includes services meeting the three elements of the definition’s (a) subparagraph and services meeting the definition’s (b) subparagraph covering services that are the functional equivalent of those satisfying the three elements of subparagraph (a).

⁶⁸ 47 CFR § 20.3 (defining Private Mobile Radio Service as a “mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service”); 47 U.S.C. § 332(d)(3) (defining “private mobile service” as “any mobile service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission”).

⁶⁹ *Notice*, 31 FCC Rcd at 8475, para. 14.

⁷⁰ *Notice*, 31 FCC Rcd at 8475, para. 14.

⁷¹ *Notice*, 31 FCC Rcd at 8475, para. 16.

⁷² *Notice*, 31 FCC Rcd at 8477, para. 22 (citing 47 CFR § 20.9(a)(14)(ii)(B)).

providers and the Commission when applying the definitions of CMRS and PMRS, and whether it should move this language to Section 20.3 or another section in Part 20.⁷³

22. EWA and NPSTC are the only commenters to address this issue. EWA touches on the PMRS rebuttal process when arguing that “[t]he fact that the FCC’s records are essentially devoid of proceedings in which the claimed CMRS or PMRS status of an applicant or licensee has been challenged, based on ‘functional equivalency’ or any other argument, confirms that the rules do not need to specify services with a CMRS presumption or define the means of overcoming it.”⁷⁴ NPSTC, while supportive of eliminating Section 20.9’s approach for designating services as CMRS, is more cautious with respect to the PMRS presumption. Specifically, it does not express an opinion on the removal of that presumption but asks, instead, that the Commission “ensure that sufficient clarity in the definition of, and requirements for, PMRS and CMRS classifications are maintained,” and it argues that such clarity would minimize the need for the Commission to initiate enforcement action related to a carrier’s regulatory status, and ensure that any challenges to an entity’s regulatory status will be well-founded.⁷⁵

23. We retain the key aspects of the PMRS presumption by revising our definition of Private Mobile Radio Service in Section 20.3 to provide a party with a presumption that it meets that definition (as against a challenge that the service is CMRS), if the service in question does not meet the three specific elements for qualifying as a CMRS under subparagraph (a) of the Section 20.3 CMRS definition.⁷⁶ In such case, a challenger would bear the burden of proving that the service meets subparagraph (b) of the CMRS definition (i.e., that it is the functional equivalent of a service that satisfies the subparagraph (a) elements) and therefore does not qualify as PMRS. While the rules thus continue to recognize that a service not meeting the specific subparagraph (a) elements of the CMRS definition is presumptively PMRS,⁷⁷ we decline otherwise to carve out the rebuttal process from our elimination of Section 20.9. We anticipate that the CMRS and PMRS definitions in Section 20.3 as revised in this Report and Order will provide sufficient clarity to enable the Commission, licensees and spectrum lessees, and members of the public to differentiate between CMRS and PMRS and, relatedly, to assess whether a licensee is offering a service that is the “functional equivalent” of CMRS. At the same time, we have identified various benefits of eliminating the use of the scheme embodied in Section 20.9, which has discouraged the flexible use of spectrum in the identified frequency bands and created unnecessary hurdles for a subset of mobile service providers.

24. In sum, we see no need to retain any of the Section 20.9 provisions about whether service being provided in a particular frequency band is commercial or private, or to retain rebuttal procedures crafted as part of the Section 20.9 approach. We stress that, even without Section 20.9(a)(14), interested parties will continue to have avenues available to challenge whether an entity’s operation is “non-common carrier” or “private, internal communications.”⁷⁸ Elimination of the Section 20.9(a)(14) process thus neither materially affects the opportunity for interested parties to challenge an entity’s claim of

⁷³ *Notice*, 31 FCC Rcd at 8477, para. 22.

⁷⁴ EWA Comments at 4-5.

⁷⁵ NPSTC Comments at 5.

⁷⁶ *See supra* at note 67.

⁷⁷ In this regard, we note that the Commission has long recognized this presumption. *See, e.g., CMRS Second Report and Order*, 9 FCC Rcd at 1447, para. 79 (1994) (stating that the Commission “will presume that a mobile service that does not meet the definition of CMRS [as per the specific three-element definition] is a private mobile radio service. This presumption may be overcome only upon a showing by a petitioner challenging the PMRS classification that the mobile service in question is the functional equivalent of a commercial mobile radio service”).

⁷⁸ As the Commission explained in the *Notice*, it has considered allegations that a service provider is offering service that is functionally equivalent to CMRS in contexts other than the Section 20.9(a)(14) petition for declaratory ruling process. *See Notice*, 31 FCC Rcd at 8477-78, para. 23 & n.57 (citing examples addressed as part of petitions for reconsideration and informal objection proceedings).

private status, nor alters the distribution of the burden of proof in adjudicating such a challenge (i.e., a party challenging a licensee's claim of private status bears the burden of presenting sufficient allegations of fact to overcome the presumptive validity of that claim). Similarly, the exemplary factors for determining whether a service is the "functional equivalent" of CMRS, discussed in the *CMRS Second Report and Order*,⁷⁹ remain probative in potential challenges, even if they are no longer memorialized in our rules. Nonetheless, given concerns raised by commenters, and for ease of future reference for parties seeking to rely on them as illustrative examples, we move the "functional equivalent" exemplary factors to the definition of CMRS in Section 20.3 and slightly revise the rule to indicate that reliance on these examples is permissible but not required.⁸⁰ Finally, nothing in our action here alters our authority, independent of Section 20.9, to take enforcement action against a licensee that tries to avoid CMRS regulation by misrepresenting that its service is or will be operated on a "non-common carrier" or "private, internal communications" basis.⁸¹

B. Elimination of Section 20.7

25. Most commenters do not address the Commission's proposal to remove Section 20.7, which lists certain services in various Commission rules parts that meet the statutory definition of "mobile services."⁸² T-Mobile is the only party that raises a concern with removal of a specific subpart of the rule, Section 20.7(h).⁸³ Section 20.7(h) includes within the list of mobile services "[u]nlicensed services meeting the definition of [CMRS] in §20.3, such as the resale of [CMRS], but excluding unlicensed radio frequency devices under part 15 of this chapter (including unlicensed personal communications service devices)."⁸⁴ T-Mobile argues that this language represents an intentional decision by the Commission to exclude Part 15 unlicensed services from the definition of "mobile service" in Section 20.7.⁸⁵ T-Mobile asks the Commission to either preserve Section 20.7(h) or incorporate its wording into Section 20.3.⁸⁶ No other commenter raises this concern.

26. We eliminate Section 20.7, which provides an outdated and incomplete list of some, but not all, services that meet the definition of "mobile service" as used in the Act. This approach is

⁷⁹ *CMRS Second Report and Order*, 9 FCC Rcd at 1447-48, para. 80.

⁸⁰ See Appendix A, Final Rules.

⁸¹ See, e.g., 47 U.S.C. § 308(b) (noting that "[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to . . . the purposes for which the station is to be used; and such other information as it may require," and noting that the Commission "may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked"); 47 U.S.C. § 312(a)(1) (permitting license revocation for false statements made under Section 308); 47 CFR § 1.17 (requiring truthful and accurate statements to the Commission).

⁸² NPPD supports elimination of Section 20.7. See NPPD Comments at 1. MSI, without directly stating its support for elimination of Section 20.7, asks the Commission to make clear that elimination of both Sections 20.7 and 20.9 will not alter the regulatory classification of or obligations applicable to current licensees. See MSI Comments at 2; see also CTIA Comments at 4 n.11.

⁸³ T-Mobile Reply Comments at 1-4.

⁸⁴ 47 CFR § 20.7(h).

⁸⁵ See T-Mobile Reply Comments at 2-3. T-Mobile argues that the Commission considered whether certain unlicensed services should be included within the definition of "mobile services" in the *CMRS Second Report and Order*, and, based on comments it received, determined that those services should not be considered "mobile services." *Id.* at 2. T-Mobile argues that elimination of Section 20.7(h) would constitute a "substantive amendment" by rescinding that classification of Part 15 unlicensed devices. *Id.* at 3. T-Mobile also expresses concern that elimination of Section 20.7 could "be misinterpreted to suggest that services provided to devices authorized under Part 15 may be mobile services." T-Mobile *Ex Parte* Letter at 1.

⁸⁶ T-Mobile Reply Comments at 3-4.

consistent with our elimination of Section 20.9, in favor of relying instead on the definition of CMRS in Section 20.3. As is the case with respect to the definition of CMRS, Section 20.3 clearly articulates the definition of “mobile service,” consistent with the statutory definition. Elimination of Section 20.7 will thus not affect the Commission’s understanding or application of the term “mobile service” in the Act or under our rules.

27. Regarding the concern raised by T-Mobile about the regulatory categorization of Part 15 unlicensed devices, we note that, in the *CMRS Second Report and Order*, the Commission found that the definition of “mobile service” in the 1993 OBRA includes “service for which a license is required in a personal communications service,” and therefore concluded that “mobile service” does not include unlicensed PCS and Part 15 devices.⁸⁷ Nothing we do here should be construed as affecting the Commission’s findings in the *CMRS Second Report and Order*. Nonetheless, to ensure that there is no confusion on this issue, we revise Section 20.3 to make clear that the term “mobile service” explicitly excludes unlicensed radio frequency devices under Part 15 of the Commission’s rules.

C. Edits to Parts 1, 4, and 9 of the Rules

28. Consistent with the Commission’s proposal in the *Notice* and our efforts to streamline our rules, we make corrective edits to rule parts that errantly cross-reference Section 20.9 for the definition of CMRS, rather than cross-referencing the definition in Section 20.3, the definitions section for Part 20. Specifically, Section 4.3(f) of the rules, which defines “wireless service providers” that are subject to outage reporting requirements, cross-references Section 20.9 for a definition of CMRS.⁸⁸ Section 9.3, related to the provision of interconnected VoIP services, similarly defines CMRS as “Commercial Mobile Radio Service, as defined in §20.9 of this chapter.”⁸⁹ We will amend both sections to remove the reference to Section 20.9 and refer instead to the definition of CMRS in Section 20.3.⁹⁰

29. CTIA requested changes to Section 1.907’s definitions of Private Wireless Services and Wireless Telecommunications Services to remove cross-references to other CFR rule Parts that appear in those definitions.⁹¹ Our current proceeding has focused on the treatment of services defined and regulated as PMRS and CMRS under Part 20 of our rules and cross-referenced in several other related rules. While the definitions for which CTIA seeks modification are not coextensive with the definitions of PMRS and CMRS, we sought broad comment in this proceeding on whether to eliminate the itemized, service-by-service approach to classifying wireless services that the Commission had superimposed over the statutory definitions, in favor of an approach that enabled applicants and licensees themselves to classify—under straightforward statutory definitions—what type of permitted flexible operations they had chosen to provide (rather than forcing them to proceed under a categorical framework that requires parties to seek an exception from the Commission when their choice of flexible operations will not line up with the correct statutorily-defined wireless classification that the rules are forcing them into).⁹² CTIA’s proposal for eliminating the categorical list of services classified as Wireless Telecommunications Services under the Section 1.907 definitions is virtually indistinguishable in these regards from the proposal we made in this proceeding for CMRS, as the elimination of these categories from the Wireless Telecommunications Service definition will remove the needless inefficiency and reduce the rigidity of such a categorical approach, while leaving intact in the rule the critical classification benchmark—*i.e.*, the definition of “telecommunications service” in Section 3 of the Act—on which applicants and licensees

⁸⁷ *CMRS Second Report and Order*, 9 FCC Rcd at 1424-25, para. 37.

⁸⁸ 47 CFR § 4.3(f).

⁸⁹ 47 CFR § 9.3, Definition of CMRS.

⁹⁰ *Notice*, 31 FCC Rcd at 8476, paras. 19-20.

⁹¹ See CTIA December 5 *Ex Parte* Letter at 2-3.

⁹² See, *e.g.*, *Notice*, 31 FCC Rcd at 8475-78, paras. 15-23.

can rely in choosing to provide Wireless Telecommunications Service. In contrast, we will not, in this proceeding, modify the Section 1.907 definition of Private Wireless Service because this aspect of CTIA's proposals addresses a definition in the rules that does not expressly invoke a statutory definition to provide a ready benchmark that can replace the categories of service that are listed categorically as comprising (and defining) the Private Wireless Services. Accordingly, CTIA's proposal for this definition, whatever the merits, is not part of the regulatory changes that the Commission envisioned in this proceeding, and we therefore deny this aspect of CTIA's request without prejudice.

D. Regulatory Status on FCC Forms

30. In the *Notice*, the Commission requested comment on whether it would need to make changes to any of its forms if it were to eliminate Section 20.9. For example, it noted that Form 603 (used for assignments and transfers of control) does not include an option for an assignee/transferee to indicate a different regulatory status for a license at issue in the proposed transaction, and suggested that, if the Commission eliminated Section 20.9, it would need to revise Form 603 to permit such a designation.⁹³ The Commission also sought comment on whether the regulatory status options provided on Form 601 and other forms—"common carrier," "non-common-carrier," and "private, internal communications"—were confusing, and asked whether they should be replaced with or altered to include the CMRS/PMRS terminology.⁹⁴

31. Only one party addresses the *Notice*'s questions about forms. EWA recommends that the Commission retain the three regulatory status categories currently used on Form 601 and other forms—"common carrier," "non-common carrier," and "private/internal communications."⁹⁵ EWA argues that replacing these categories with a choice of "CMRS" or "PMRS" would not fully reflect the regulatory status of certain licensees' operations. For example, it notes that there are private internal systems and non-interconnected commercial systems using Part 22 and Part 80 spectrum, and the commercial systems identify themselves as "non-common carrier," while internal users select "private." EWA argues that, if the forms were changed, both of those systems would be identified as "PMRS," causing confusion and making it more time consuming to determine those licensees' actual use of the spectrum.⁹⁶

32. We decide not to replace the current form designations of "common carrier," "non-common carrier," and "private, internal communications" with the alternatives of CMRS or PMRS. We agree with EWA that the change would create a less detailed description of regulatory status for certain licensees. Further, the current designations, in combination with a filer's responses to form questions regarding the type of radio service being provided, are used by the Commission to determine, among other things, regulatory fees and which filings may need to go on an accepted for filing public notice. We also decline to revise Form 601 or other forms to add an additional question asking an entity to distinguish whether it is providing, or plans to provide, "CMRS" and/or "PMRS." Adding this to our forms and to ULS would be costly, without providing us with additional useful information beyond what we already obtain from the combination of questions about regulatory status and type of radio service being provided.

33. The current ULS Form 601 permits an applicant to select the status of its radio service operation as "common carrier," "non-common carrier," or "private, internal communications," or some combination, to the extent applicable.⁹⁷ This status must be selected when an applicant first files for an

⁹³ *Notice*, 31 FCC Red at 8478, para. 25.

⁹⁴ *Notice*, 31 FCC Red at 8478-79, para. 26.

⁹⁵ EWA Comments at 5.

⁹⁶ EWA argues that determining a licensee's actual use of the spectrum in this scenario would require going beyond the main page for the licensee in ULS, pulling up its application, and examining the response to Schedule H, Item 2, where applicants describe the activity for which they will use the requested spectrum. EWA Comments at 5.

⁹⁷ FCC Form 601, Item 41 (Regulatory Status).

authorization. Under the action taken today, applicants in services previously covered by Section 20.9 will have the same flexibility as other licensees that utilize ULS to select the appropriate status or statuses, without additional regulatory requirements. A licensee also can use the Form 601 to modify its regulatory status to add an additional status or change the status under which it was originally licensed.⁹⁸ Applications on Form 601 to modify regulatory status are processed as a minor modification to the subject authorization.⁹⁹

34. The current Form 603 does not permit a proposed assignee or transferee to make any selection regarding regulatory status. Rather, the proposed assignee or transferee receives the license with the regulatory status as designated by the assignor or the pre-transfer licensee. Because a change to Form 603 would require corresponding changes to ULS, including costly reprogramming and additional time to implement, we direct staff to explore an interim process for permitting a proposed assignee or transferee to modify the regulatory status for a license as part of the assignment or transfer of control application, perhaps by permitting the applicants to provide in an exhibit a request for change. In the interim and as can be done under our current processes, assignees or transferees will be able to file a modification on Form 601 to change the regulatory status of a license obtained pursuant to a transaction after the transaction is consummated.

35. The current Form 608, Item 9, permits a proposed spectrum lessee to indicate at the time of filing an initial spectrum leasing application what regulatory status or statuses are applicable to its planned operations on the leased spectrum. Once a spectrum leasing arrangement is granted or accepted, as applicable, the spectrum lessee may file a lease modification on Form 608 to indicate a change in the regulatory status as application to its operations under the spectrum leasing arrangement.¹⁰⁰

E. Other Issues

36. Several commenters raise issues that were not discussed in the *Notice*. For example, MSI and NPPD highlight several Part 22 rules that they argue are ripe for reform, and ask the Commission to initiate a separate rulemaking to review these and other Part 22 rules.¹⁰¹ Those issues are beyond the scope of this proceeding and we do not address them here.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

37. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

38. The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁰²

C. Final Regulatory Flexibility Certification

39. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies

⁹⁸ FCC Form 601, Instructions, Item 41.

⁹⁹ See 47 CFR § 1.929 (classification of filings as major or minor).

¹⁰⁰ FCC Form 608, Instructions, Item 9.

¹⁰¹ MSI Comments at 3-4; NPPD Comments at 1-2.

¹⁰² See 5 U.S.C. § 801(a)(1)(A).

that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The Final Regulatory Flexibility Certification of the possible economic impact of the rule changes contained in the Report and Order is attached as Appendix B.

D. Contact Information

40. For further information regarding the Report and Order, contact Kathy Harris at (202) 418-0609, Kathy.Harris@fcc.gov, or Thomas Reed at (202) 418-0531, Thomas.Reed@fcc.gov.

V. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, and 332, that this REPORT AND ORDER in WT Docket No. 16-240 IS ADOPTED.

42. IT IS FURTHER ORDERED that the REPORT AND ORDER SHALL BE EFFECTIVE 30 days after publication of a summary of the REPORT AND ORDER in the Federal Register.

43. IT IS FURTHER ORDERED that Part 1 of the Commission’s rules, 47 CFR Part 1, Part 4 of the Commission’s rules, 47 CFR Part 4, Part 9 of the Commission’s rules, 47 CFR Part 9, and Part 20 of the Commission’s rules, 47 CFR Part 20, ARE AMENDED as specified in Appendix A, effective 30 days after publication in the Federal Register.

44. IT IS FURTHER ORDERED that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission SHALL SEND a copy of the REPORT AND ORDER to Congress and to the Government Accountability Office.

45. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the REPORT AND ORDER, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

46. IT IS FURTHER ORDERED that, if no petitions for reconsideration or applications for review are timely filed, this proceeding SHALL BE TERMINATED and the docket CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Parts 1, 4, 9, and 20 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1 – PRACTICE AND PROCEDURE.

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

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

- 2. Amend Section 1.907’s definition of “Wireless Telecommunications Services” as follows:

§1.907 Definitions.

* * * * *

Wireless Telecommunications Services. Wireless Radio Services, whether fixed or mobile, that meet the definition of “telecommunications service” as defined by 47 U.S.C. 153, as amended, and are therefore subject to regulation on a common carrier basis.

* * * * *

PART 4 – DISRUPTIONS TO COMMUNICATIONS

- 3. The authority citation of Part 4 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c of Pub. L. 73-416, 48 Stat. 1064, as amended, and section 706 of Pub. L. 104-104, 110 Stat. 56; 47 U.S.C. 151, 154(i)-(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, 615c, and 1302, unless otherwise noted.

- 4. Amend Section 4.3(f) to remove the reference to Section 20.9 and replace it with a reference to Section 20.3, as follows:

§4.3 Communications providers covered by the requirements of this part.

* * * * *

(f) Wireless service providers include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS paging providers. See §20.3 of this chapter for the definition of Commercial Mobile Radio Service. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

* * * * *

PART 9 – INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

- 5. The authority citation of Part 9 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i)-(j), 251(e), 303(r), and 615a-1 unless otherwise noted.

- 6. Amend Section 9.3 to remove the reference to Section 20.9 and replace it with a reference to Section 20.3, as follows:

§9.3 Definitions.

* * * * *

CMRS. Commercial Mobile Radio Service, as defined in §20.3 of this chapter.

* * * * *

PART 20 – COMMERCIAL MOBILE SERVICES

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

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

8. Amend Section 20.3’s definition of “Commercial mobile radio service” to include a new paragraph (c) and a new paragraph (d), as follows:

§20.3 Definitions.

* * * * *

Commercial mobile radio service. * * *

* * * * *

(c) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(d) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

9. Amend Section 20.3’s definition of “Private Mobile Radio Service” to read as follows:

Private mobile radio service. A mobile service that meets neither the subparagraph (a) nor subparagraph (b) definitions of commercial mobile radio service set forth in this section. A mobile service that does not meet the subparagraph (a) definition of commercial mobile radio service in this section is presumed to be a private mobile radio service. Private mobile radio service includes the following:

* * * * *

10. Remove and reserve Section 20.7:

§ 20.7 [Reserved]

11. Remove and reserve Section 20.9:

§ 20.9 [Reserved]

APPENDIX B

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concerns” under the Small Business Act.⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵
12. In the Report and Order, we streamline our Part 20 rules to remove regulatory burdens and processing delays for certain wireless licensees and applicants. Specifically, we remove the categories and presumptions that applicants, licensees, and lessees in the service bands identified in Section 20.9 intend to license their facilities as CMRS operations by eliminating Section 20.9 from our rules and making related rule changes. We also simplify the process by which an applicant, licensee, or lessee in the affected services will indicate its regulatory status in the relevant FCC application forms.
13. We have determined that the impact on the entities affected by the rule change will not be significant. The effect is to allow those entities, including small entities, greater flexibility in self-selecting their regulatory status as “common carrier,” “non-common carrier” or “private, internal,” and to reduce delays in the processing of applications related to their regulatory status. This will reduce paperwork burdens for affected entities that desire to operate on a PMRS-basis but previously had to file waiver requests or certifications with their applications to overcome the presumption that their services were CMRS, and reduce the Commission’s processing time of such applications. In turn, we expect fewer delays in application processing, certain secondary market transactions, and in licensees’ ability to make efficient use of their spectrum. The reduction in paperwork, application processing time, and regulatory delays will be beneficial to small businesses as well as to all affected entities.
14. We therefore certify that the requirements of the Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁶ In addition, the Report and Order and this final certification will be sent to the Chief Counsel for

¹ 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).

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

⁴ 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.”

⁵ 15 U.S.C. § 632.

⁶ *See* 5 U.S.C. § 801(a)(1)(A).

Advocacy of the SBA, and will be published in the Federal Register.⁷

⁷ See 5 U.S.C. § 605(b).

APPENDIX C**List of Commenters****WT Docket No. 16-240**Comments

CTIA

Enterprise Wireless Alliance (EWA)

Government Wireless Technology & Communications Association (GWTCA)

Nebraska Public Power District (NPPD)

Motorola Solutions, Inc. (MSI)

Reply Comments

National Public Safety Telecommunications Council (NPSTC)

T-Mobile USA, Inc. (T-Mobile)

Ex Parte Letters

CTIA

EWA

T-Mobile

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Amendments to Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption*, WT Docket No. 16-240.

With today's *Order*, we eliminate unnecessary rules that make no sense with today's flexible use approach to licensing. Specifically, we will no longer presume that certain spectrum bands are being used to provide commercial service rather than private service. Instead, we'll simply regulate licensees based on the nature of the services they are actually providing. This will eliminate the need for providers seeking to offer private service in particular spectrum bands to jump through extra hoops at the Commission in order to be regulated as a private service. But it won't make any changes to the underlying obligations required for either commercial or private service.

This is as common-sense and good-government a measure as you get, and it finalizes the proposal we unanimously adopted just last year.

Thanks to the staff for their work to help us modernize these rules. In particular, thanks to Jessica Greffenius, Kathy Harris, Roger Noel, Tom Reed, Jennifer Salhus, and Peter Trachtenberg from the Wireless Telecommunications Bureau; Jennifer Gilsean and Karl Kensinger from the International Bureau; Jim Bradshaw from the Media Bureau; Kristine Fargotstein from the Wireline Competition Bureau; Michael Connelly and Michael Wilhelm from the Public Safety and Homeland Security Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and David Horowitz and Anjali Singh from the Office of General Counsel.

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Amendments To Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption, WT Docket No. 16-240.

If the topic of Part 20 of the Commission's rules were introduced at the average American dinner table, it might go over as well as a serving of Rocky Mountain oysters. Neither would be warmly received at my home. The changes proposed in this Order -- coupled with the majority's dismantling of net neutrality -- have many unsavory implications for the future of competition policy.

As I made clear in my statement opposing the rollback of our open internet rules, I believe that the proper interpretation of Section 332 of the Communications Act is that mobile broadband internet access service should be classified as a commercial mobile radio service, or CMRS, not a private mobile radio service.

Eliminating these Part 20 rules means we will remove precedent and procedures that could help parties demonstrate that a wireless company's mobile broadband service should be classified as CMRS. I understand that some may see this as a mere streamlining of Commission rules. In my opinion, this Order removes important procedural safeguards, such as requiring the Commission to put certain applications out on public notice, which can help inform parties who are interested in challenging a company's claim that its mobile broadband internet access services should be classified as a private mobile radio service. And since that result is inconsistent with my view of the proper classification for mobile broadband services, I respectfully dissent from this Order.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Amendment to Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption*, WT Docket No. 16-240.

The United States leads the world in wireless. One of the reasons for this success is the FCC's decision to embrace a flexible use policy for spectrum. Instead of mandating that a particular spectrum band be used with a specific type of wireless technology or service, we generally leave that choice to the private sector, which has a much better sense of consumer demand. This approach has enabled wireless networks in the U.S. to evolve with technology and to do so much more quickly than if operators had to obtain government sign-off each step of the way. Our leadership in 4G is just one example of how this policy has worked to the benefit of consumers.

Today, we carry that approach forward by eliminating 20-year-old rules that reflect a different approach to spectrum policy—one that required providers operating in particular spectrum bands to obtain FCC permission before innovating or bringing certain service offerings to market. This change will not only help level the regulatory playing field for wireless providers, but it will also result in more timely and efficient use of spectrum. The flexibility we provide today will be particularly important as we look to extend our global leadership in wireless as 5G and Internet of Things offerings come online. I support the Order and hope that we continue the agency's efforts to identify and eliminate outdated and unnecessary regulatory burdens.