

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

In the Matter of)
)
Facilitating Shared Use in the 3100-3550 MHz) WT Docket No. 19-348
Band)

ORDER

Adopted: November 10, 2022

Released: November 10, 2022

By the Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. With this Order, the Wireless Telecommunications Bureau (Bureau) identifies four entities that will form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary, non-federal radiolocation licensees in the 3.45-3.55 GHz band (3.45 GHz band). These entities are NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA, and the Competitive Carriers Association (CCA). In addition, the Bureau adopts certain requirements regarding the Clearinghouse search committee process and the operation of the Clearinghouse. These requirements support the prevention of waste, fraud, and abuse in the handling of reimbursement funds and will protect confidential information.

II. BACKGROUND

2. In the *3.45 GHz Band Second R&O*, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States.¹ To

¹ *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987 (2021) (*3.45 GHz Band Second R&O*).

facilitate this goal, the Commission previously had determined that secondary, non-federal radiolocation licensees in the band would be relocated to the 2.9-3.0 GHz band.² In the *3.45 GHz Band Second R&O*, the Commission further determined that secondary, non-federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band.³ Because these licenses were granted on May 4, 2022,⁴ the non-federal radiolocation authorizations sunset on October 31, 2022.⁵ In addition, the Commission in the *3.45 GHz Band Second R&O* required “new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those operations to the 2.9-3.0 GHz band, including the costs of a relocation clearinghouse’s administration of the reimbursement.”⁶ Specifically, each new 3.45 GHz Service licensee “will be responsible for reimbursement of a *pro rata* share of reasonable relocation costs of non-federal radiolocation operations.”⁷

3. The Commission in the *3.45 GHz Band Second R&O* delegated authority to the Bureau, working in coordination with the Office of the Managing Director, to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding.⁸ The Commission’s delegation also included the “authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement [the Commission’s] decision and, if necessary for the purposes of the more limited relocation [in the 3.45 GHz Service], to adjust the procedures adopted in [the 3.7 GHz] proceeding to tailor them to the relocation in [the 3.45 GHz] proceeding.”⁹ As in the 3.7 GHz proceeding, the Commission in the *3.45 GHz Band Second R&O* provided for the creation of a neutral, independent clearinghouse to oversee the collection and distribution of relocation reimbursement payments from new 3.45 GHz Service licensees to non-federal secondary radiolocation incumbents.¹⁰ Unlike in the 3.7 GHz context, however, in the 3.45 GHz proceeding, the Commission did not identify the specific industry stakeholders who would compose the search committee to select the Clearinghouse.¹¹

² *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078, 11086, para. 20 (2020) (*3.45 GHz Band R&O and FNPRM*).

³ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6041, para. 152; *see also* 47 CFR § 2.106 n.US103.

⁴ *Wireless Telecommunications Bureau Grants Auction 110 Licenses*, Public Notice, DA 22-462 (WTB May 4, 2022) (*3.45 GHz Band Grant PN*).

⁵ The Bureau granted conditional STAs to Nexstar and NBCUniversal to conduct reduced operations on a non-interference basis for a limited period of time beyond October 31, 2022. *See* ULS File Nos. 0010238879 and 0010256744.

⁶ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6042, para. 155. The Commission “anticipate[d] clearinghouse costs to be minimal, given the limited number of licensees being relocated and relatively small estimated cost of their transition. The radiolocation service incumbents will initially fund the clearinghouse and can request reimbursement from new flexible-use licensees for the clearinghouse costs.” *Id.* at 6042, para. 155, n.386.

⁷ *Id.*, 36 FCC Rcd at 6044, para. 161. As the Commission explained, “the total relocation costs will be divided by the number of 3.45 GHz Service licenses and each licensee will be required to pay their share based on the number of licenses they hold.” *Id.*; *see also* 47 CFR § 27.1604.

⁸ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163.

⁹ *Id.*

¹⁰ *Compare Expanding Flexible Use in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2446, para. 255 (2020) (*3.7 GHz Band R&O*) and 47 CFR § 27.1414 with *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163 and 47 CFR § 27.1605.

¹¹ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2450-51, paras. 273-75.

4. On August 20, 2021, the Bureau released a Public Notice seeking comment on the selection process for, and operation of, the Clearinghouse.¹² Comments and replies were due on September 30, 2021, and October 12, 2021, respectively. The Bureau received comments from Nexstar, NBCUniversal, and CTIA; a reply from the Wireless Infrastructure Association (WIA); and a subsequent *ex parte* letter from CCA.

III. DISCUSSION

A. Composition of the Clearinghouse Search Committee

5. As noted above, the Commission delegated authority to the Bureau to implement a clearinghouse selection process similar to the process used in the 3.7 GHz band transition.¹³ In the 3.7 GHz proceeding, the Commission determined that the clearinghouse search committee would be composed of nine members appointed by nine entities that the Commission found, collectively, reasonably represented the interests of the stakeholders in the 3.7 GHz band transition.¹⁴ These entities represented incumbents in the band (space station operators—three entities, and earth station operators—three entities) as well as prospective flexible-use licensees (three entities).¹⁵ The Commission determined that the range of entities it had chosen would fairly represent the broad interests of the relevant stakeholders in the 3.7 GHz band transition.¹⁶ Since the clearinghouse search committee was not similarly identified in the *3.45 GHz Second Report and Order*, the Bureau sought comment on the optimal number of members and which appropriate industry stakeholders should be included on the search committee for the 3.45 GHz band transition.¹⁷

6. NBCUniversal and Nexstar, the two secondary, non-federal incumbents in the 3.45 GHz band, both seek representation on the search committee.¹⁸ Due to the difference between the use and size of their operations, NBCUniversal and Nexstar favor each company having its own seat, rather than a shared incumbent representative.¹⁹ Similarly, CTIA volunteered to represent traditional wireless providers on the search committee.²⁰ CTIA also acknowledged the need for another representative to advocate for new entrants in the band that would not be covered by its own membership.²¹ WIA likewise supported representation for both small- and large-market new entrants, in addition to incumbents, suggesting two seats for the incumbents and two for new entrants to represent small and large auction winners.²² Although CCA did not initially file comments in this portion of the proceeding, CCA has since

¹² *Wireless Telecommunications Bureau Seeks Comment on the Selection Process for and Operation of the Reimbursement Clearinghouse for the 3.45 GHz Band*, Public Notice, 36 FCC Rcd 12698 (WTB Aug. 20, 2021) (*Search Committee Public Notice*).

¹³ See *3.45 GHz Band Second R&O*, 36 FCC Rcd 5987.

¹⁴ *3.7 GHz Band R&O*, 35 FCC Rcd at 2450-51, para. 274; 27 CFR § 27.1414(a)(1).

¹⁵ *Id.* at 2450-51, para. 274.

¹⁶ *Id.*

¹⁷ *Search Committee Public Notice*, 36 FCC Rcd at 12699-70.

¹⁸ NBCUniversal Comments at 1; Nexstar Comments at 2-3.

¹⁹ NBCUniversal Comments at 1; Nexstar Comments at 2- 3.

²⁰ CTIA Comments at 7.

²¹ *Id.*

²² Wireless Infrastructure Association Reply at 1 (WIA Reply).

indicated an interest in serving on the search committee to represent the small-market segment of new entrants.²³

1. Representation of Interests.

7. We find that equal representation of both interest groups present in the instant transition—incumbent radiolocation systems and new-entrant flexible-use licensees—is both consistent with the 3.7 GHz band transition and will ensure a fair and transparent Clearinghouse selection process in this proceeding. Specifically, each interest group will have two seats: two incumbent seats to represent NBCUniversal’s and Nexstar’s differing business models, and two new-entrant seats to represent both small- and large-market flexible-use licensees.

8. *First*, we find that equal representation of both interest groups is consistent with the approach used in the 3.7 GHz band proceeding. There, the search committee was comprised of nine members representing three distinct interest groups: incumbent space station operators, incumbent earth station operators, and prospective flexible-use licensees.²⁴ Each interest group received three representatives on the search committee, which included seats for smaller and larger interests within each interest group segment.²⁵ The corollary of the 3.7 GHz band approach here is thus equal representation of the two interest groups in the 3.45 GHz transition: non-federal radiolocation incumbents and new entrants, with two seats on each side. We agree with WIA that new entrants are a diverse group that would be best served by representatives for both smaller and larger new entrants.²⁶

9. *Second*, we find that equal representation will foster compromise. By having equal representation from both interest groups on the search committee, no one group can act unilaterally in the selection process, ensuring that the resulting Clearinghouse fairly facilitates the transition process. We agree with WIA that having equal representation for both interest groups on the search committee will provide “confidence that the clearinghouse selected remains impartial and will seek an equitable outcome for all the parties involved in the relocation.”²⁷

10. While this approach deviates from our proposal in the *Public Notice* to have an odd number of members on the search committee, the Bureau sought comment on the optimal number of members to include on the search committee.²⁸ Further, we specifically recognized that the 3.45 GHz relocation would be less complex than that in the 3.7 GHz band, and suggested that a smaller committee might be more efficient.²⁹ We find that a search committee comprised of four members, two incumbent representatives and two new entrant representatives, will accurately reflect the interests present in the 3.45 GHz band, is responsive to suggestions raised by commenters, and is well-positioned to facilitate compromise. In the event that equal representation leads to deadlock despite our instruction to proceed by consensus,³⁰ the search committee shall inform the Bureau and the Bureau may then consider additional measures, including resolution by majority vote or appointment of an additional search

²³ See Letter from Angela Simpson, General Counsel & SVP, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348 (filed June 8, 2020) (CCA *Ex Parte* Letter).

²⁴ *3.7 GHz Band R&O*, 35 FCC Rcd at 2450, para. 274.

²⁵ *Id.*

²⁶ WIA Reply at 2.

²⁷ *Id.*

²⁸ *Search Committee Public Notice*, 36 FCC Rcd at 12700 (noting that the 3.7 GHz band search committee was comprised of an odd number of members).

²⁹ *Id.*

³⁰ See *infra* para. 15.

committee member. The Bureau shall act on such request within 30 days, and the search process shall continue consistent with this Order and the Commission's rules.

11. We disagree with Nexstar that the approach most consistent with the 3.7 GHz band process would be to have two-thirds of the search committee seats here represented by incumbent interests.³¹ While two-thirds of the 3.7 GHz band search committee was comprised of incumbents, the incumbent space station operators and earth station operators represent distinct industry segments. For example, in the 3.7 GHz band space station operators provide downlink signals to various types of earth stations,³² and the earth station operators in turn deliver programming to television and radio broadcasters and telephone and data services to consumers.³³ Each incumbent group was given its own equal representation on the 3.7 GHz band search committee to reflect the differences in their interests with respect to the transition process.³⁴ We apply the same logic here, and thus have designated equal representation of both the incumbent and new entrant interest groups in the 3.45 GHz band.

2. Number of Seats and Membership

12. As discussed above, we find that here the appropriate implementation of equal representation is two search committee seats for the incumbents and two for the new entrants. Specifically, we find that the four-member Clearinghouse search committee will be comprised of representatives from NBCUniversal, Nexstar, CTIA, and CCA. As proposed in the *Search Committee Public Notice*, each entity shall nominate one individual to serve on the search committee.³⁵ WIA, the commenter to most directly address this issue, supports this process, and states that such representation will promote confidence that the selected clearinghouse will be fair to all parties in the transition.³⁶

13. NBCUniversal and Nexstar, both of which volunteered to be on the search committee, will represent their own respective interests as secondary incumbent radiolocation service users. We find that CTIA and CCA together will best represent the interests of new entrants given their diverse memberships. CTIA, which also volunteered to be on the search committee, will represent the larger-new entrant interests to the band. CCA indicated an interest in serving on the search committee and will represent the interests of smaller and rural entities.

14. We find that CCA is best positioned to serve as the second new-entrant representative on the search committee. We agree with WIA that the new entrants' interests are diverse and that it is important to have the interests of smaller and rural providers represented on the search committee. CCA notes that its members include "small, rural carriers serving fewer than 5,000 customers" and also indicates that some of its members are license winners in the 3.45 GHz band.³⁷ Thus, we find that CCA is well-situated to represent the smaller and rural new entrants in the band.³⁸

B. Search Committee's Selection of the Clearinghouse

15. In the 3.7 GHz proceeding, the Commission directed the search committee to proceed by consensus, but noted that if a vote on the selection of a clearinghouse was required, it would be by a

³¹ Nexstar Comments at 2.

³² *3.7 GHz Band R&O*, 35 FCC Rcd at 2450, para. 8.

³³ *Id.*

³⁴ *Id.* at 2450, para. 274.

³⁵ *Search Committee Public Notice*, 36 FCC Rcd at 12700.

³⁶ WIA Reply at 2.

³⁷ CCA *Ex Parte* Letter at 1.

³⁸ The majority of winning bidders fell into the three categories—rural entities, small businesses, and regional carriers. Thirty percent of winning bidders used a rural bidding credit and 26 percent used a small business bidding credit. *Auction 110 Licenses Accepted for Filing PN*.

majority vote.³⁹ Likewise here, as proposed in the *Search Committee Public Notice*, we direct the search committee to proceed by consensus.⁴⁰ In the event of deadlock, however, we direct the search committee to notify the Bureau. As noted above, in the event of deadlock under the current composition, the search committee shall inform the Bureau and the Bureau may then consider additional measures to resolve the deadlock. Further, the Bureau shall act on such request within 30 days of the search committee's request, and the search process shall continue consistent with the Commission's rules.

16. We require each search committee member to certify that they have reviewed and understand the Commission's rules and requirements contained in this Order and the *Second R&O*. Such certifications must be filed in the docket of this proceeding prior to the first meeting of the selection committee, but no later than January 5, 2023. In the event that a new search committee member is added, its certification must be filed in the docket of this proceeding no later than 30 days after the Bureau releases a Public Notice identifying the new search committee member.

17. The search committee must meet no later than January 5, 2023. In addition, by March 6, 2023, the search committee must release and file with the Bureau a Request for Proposal (RFP), or similar solicitation for Clearinghouse applications. Such solicitation must explain in detail the selection criteria for the position of Clearinghouse and must be consistent with the qualifications, roles, and duties of the Clearinghouse as set forth in the Commission's rules and this Order. Entities responding to the RFP must describe how they will comply with these criteria and rules adopted by the Commission.⁴¹ The search committee should ensure that the Clearinghouse meets the relevant best practices and standards in its operation to ensure an effective and efficient transition.

18. Thus, at a minimum, the search committee's solicitation for the Clearinghouse must include the following requirements to: (1) engage in strategic planning and adopt goals and metrics to evaluate its performance; (2) adopt internal controls for its operations; (3) use enterprise risk management practices; and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. In addition, the Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's (GAO) Green Book⁴² to serve as a guide in satisfying such requirements.

19. CTIA asks that the selected Clearinghouse be required to enter into contracts with stakeholders—i.e., with incumbents and new entrants.⁴³ CTIA explains that “contracts between new 3.45 GHz Service licensees and the Clearinghouse help ensure that the Clearinghouse's management of clearing funds has appropriate oversight.”⁴⁴ CTIA notes, however, that requiring contracts between the Clearinghouse and *all* stakeholders may stall the reimbursement process if some parties are hold outs because they lack the incentives to undertake the cost of negotiating a contract, which could significantly exceed their reimbursement liability.⁴⁵ Instead, CTIA maintains that “appropriate oversight of the Clearinghouse can be assured by confirming that licensees covering some reasonable proportion of the

³⁹ *Id.*; see also 27 CFR § 27.1414(a)(1).

⁴⁰ *Search Committee Public Notice*, 36 FCC Rcd at 12700.

⁴¹ See 47 CFR § 27.1605(a)(1)-(2). RFP responses will be binding on the applicant and, as discussed below, such responses must be incorporated into contracts with the relevant stakeholders. See *infra* para. 21.

⁴² GAO, *The Green Book: Standards for Internal Control in the Federal Government*, GAO-14-704G, (rel. Sep 10, 2014). Available at <http://www.gao.gov/greenbook/overview>.

⁴³ CTIA Comments at 8.

⁴⁴ Letter from Kara Graves, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed May 6, 2022) (*CTIA May 6, 2022 Ex Parte*).

⁴⁵ *Id.* at 2. CTIA estimates that a 3.45 GHz Service licensee which holds a single license would have an estimated reimbursement liability of \$800. *Id.* at 2, n.3.

total relocation liability have negotiated contracts with the Clearinghouse.”⁴⁶ In addition, CTIA proposes that “the Clearinghouse should be required to contract with any licensee that so desires on terms and conditions that are materially the same as those negotiated by other licensees.”⁴⁷

20. We believe this proposal has merit and will require such contracts here. Thus, we require the Clearinghouse to enter into contracts with both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses.⁴⁸ We note that while contracts were not required in the 3.7 GHz band context, that framework “expected” that contracts would be entered into between the selected Clearinghouse and the stakeholders.⁴⁹ Accordingly, we find that it is both consistent with past precedent⁵⁰ and appropriate here to require the Clearinghouse to enter into contracts with the two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

21. In addition, the Clearinghouse must enter into a contract with any licensee that so requests on terms and conditions that are materially the same as those negotiated by other licensees.⁵¹ To this end, we require the search committee to include a requirement in its RFP or other similar solicitation document that the selected Clearinghouse will be required to enter into contracts with stakeholders based on and consistent with the Commission’s rules and this Order, the terms of the RFP, and the applicant’s responses to the RFP, as described herein. Further, as part of its response to the RFP, the Clearinghouse selectee must affirmatively represent that it will enter into such contracts with two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

22. We note that CTIA also asks that such contracts “be on based on commercially reasonable terms for fiduciaries acting in the capacity of the 3.45 GHz Clearinghouse”⁵² and that the Clearinghouse recognize “that it owes fiduciary duties to both incumbents and new entrants.”⁵³ We believe that requiring contracts between the Clearinghouse and licensee stakeholders has merit in the context of this proceeding, and such contractual relationships and obligations will provide appropriate safeguards. Thus, we do not need to reach a decision on CTIA’s request for imposing a fiduciary duty.

23. The search committee’s solicitation shall also require that the Clearinghouse adopt robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition. The Clearinghouse shall therefore also comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act (FISMA),⁵⁴ National Institute of Standards and Technology (NIST) publications, and

⁴⁶ *Id.* at 3. CTIA explains that the top three winning bidders in the band will be responsible for more than 80 percent of transition costs, and the top five winning bidders will be responsible for more that 90 percent of transition costs. *Id.*

⁴⁷ *Id.* at 3.

⁴⁸ Such contracts memorialize and make enforceable by a court, the parties to the contract, and/or the Commission (in the case of a violation of a Commission requirement) the obligations on which the Clearinghouse selection was made.

⁴⁹ *3.7 GHz Band R&O*, 35 FCC Rcd at 2460, para. 312.

⁵⁰ The Commission has previously imposed requirements that contracts be entered by regulated entities and a clearinghouse set up to administer reimbursement of incumbent licensees’ relocation expenses by new, incoming licensees (as part of repurposing spectrum) in the 800 MHz band rebanding. *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, 15074-75, para. 199 (2004) (*800 MHz Order*).

⁵¹ Accordingly, the Clearinghouse may not enter into any contractual provision that would prevent or hinder its compliance with this requirement, for example, a strict non-disclosure provision.

⁵² CTIA Comments at 8.

⁵³ *Id.* at 4.

Office of Management and Budget guidance. The Clearinghouse must hire a third-party firm to independently audit and verify, on an annual basis, the Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; to correct any negative audit findings and adopt any additional practices suggested by the auditor; and to report the results to the Bureau annually beginning April 1, 2024.

24. The Bureau will issue a Public Notice notifying the public that the search committee has published criteria for the selection of the Clearinghouse. The Public Notice will announce a closing date of April 2, 2023 for submission of responses to the RFP.

25. The search committee shall notify the Bureau of its tentative choice for the Clearinghouse by May 2, 2023. This notification shall: (1) be contingent on the selectee's agreement to enter into contracts with incumbent and new, flexible-use licensee stakeholders prior to finalization of the selection; (2) fully disclose any actual or potential organizational or personal conflicts of interest or appearance of such conflict of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (3) set out in detail the salary and benefits associated with each position. The Clearinghouse shall have an ongoing obligation to update this information as soon as possible after any relevant changes are made.

26. Once the search committee has notified the Bureau of its tentative selection, the selectee must negotiate one or more contracts with stakeholder licensees. Specifically, by July 3, 2023, the selectee must submit negotiated and executed contracts to the search committee.⁵⁵ The contracts should be consistent with the requirements of this Order and the Commission's rules, the RFP, and the selectee's RFP responses. Such contracts should address issues such as any limitations on liability,⁵⁶ audits, and any such other commercially reasonable terms as may be expected to be included in contracts of this nature. After submission of contracts to the search committee, the search committee must review the contracts for compliance with the Commission's rules, the RFP, and the selectee's proposal by August 1, 2023. If the search committee determines contracts are in compliance, the search committee will notify the Bureau that it has finalized the selection of the Clearinghouse and will submit copies of the selectee's RFP response and contracts in the docket.⁵⁷ We acknowledge that requiring contracts for all 3.45 GHz Service licensees to be executed prior to the finalization of the Clearinghouse selectee may unduly delay the selection process. Thus, if the search committee has determined that the submitted contracts are in compliance and such contracts have been submitted for both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses, the search committee may submit the Clearinghouse selectee for final confirmation by the Bureau.

27. After receipt of the search committee's notification of its final selection, the Bureau will issue a Public Notice announcing the entity selected and inviting public comment on whether the selectee

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⁵⁴ Federal Information Security Management Act of 2002 (FISMA 2002), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002) was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. § 3551 *et seq.*

⁵⁵ The Bureau will consider any request for an extension of this deadline and may grant a brief extension for good cause shown.

⁵⁶ Regarding limitations on liability, we expect the Clearinghouse to accept full liability for the performance of its responsibilities, including liability for negligence or intentional misconduct in any contracts it enters into with incumbent and new, flexible-use licensee stakeholders. Further, the Clearinghouse cannot obviate its liability through use of a limited liability corporation or other structural mechanism. Should the parties choose, however, they could, for example, include a limitation on consequential damages.

⁵⁷ We agree with CTIA that only the submissions of the selectee should be filed publicly with the Commission as such filings would be "highly relevant" to the selection process. CTIA Comments at 9. Although CTIA requests that such public filings be minimally redacted, we note that commercially sensitive terms in the agreements could be submitted to the Commission with a request for confidential treatment.

satisfies the criteria set out in this Order and in the Commission's rules. Following the comment period and submission of the RFP response and contracts in the docket, the Bureau will issue a determination as to whether the criteria for the Clearinghouse either have or have not been satisfied. Should the Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity. The search committee shall remain in place at least until the Bureau issues its determination confirming the selection of the Clearinghouse.

28. In the event that: (1) the Clearinghouse selectee has not reached agreement with the two incumbent radiolocation service licensees and sufficient licensees that hold the majority of 3.45 GHz Service licenses; (2) the Bureau determines that the submitted contracts do not comply with the relevant requirements; or (3) the Bureau determines that the Clearinghouse selectee has otherwise not satisfied the selection criteria, the Bureau may in its discretion elect to give the parties 30 days to cure such noncompliance or instruct the search committee to reconvene and select a new Clearinghouse candidate, thus restarting the above process.

C. Clearinghouse Selection Process Deadlines

29. Consistent with the terms of this Order and the Commission's rules, the Clearinghouse selection process must comply with the following deadlines:

- January 5, 2023, or prior to first meeting: search committee members must file certifications in WT Docket No. 19-348.
- January 5, 2023: the search committee must meet.
- March 6, 2023: the search committee must prepare and submit the RFP to the Bureau.
- April 3, 2023: deadline for applicants to submit responses to the RFP.
- May 2, 2023: the search committee must notify the Bureau of its tentative Clearinghouse selectee.
- July 3, 2023: the Clearinghouse selectee must enter into contracts with incumbents and new entrants and submit such contracts to the search committee. For good cause shown, the search committee may request one brief extension of this deadline.
- August 1, 2023: the search committee must review contracts and notify the Bureau whether or not the contracts are approved and whether or not the Clearinghouse selection is finalized, subject to the Bureau determination that the selection criteria have been satisfied.

D. Duties of the Clearinghouse

30. Consistent with the delegation of authority in the *3.45 GHz Band Second R&O* and the Commission's rules,⁵⁸ the Bureau herein sets forth the duties of the Clearinghouse. As in other spectrum band transition processes, we find that an independent clearinghouse that oversees the reimbursement process for the 3.45 GHz band transition in a "fair, and transparent manner will best serve the public interest."⁵⁹ To that end, below we establish procedures to prevent waste, fraud, and abuse in connection with relocation reimbursement disbursements.⁶⁰

31. *Collection of reimbursement requests and supporting documentation.* The Clearinghouse will be responsible for collecting from the two incumbent radiolocation operators a showing of their

⁵⁸ See *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163.

⁵⁹ *3.7 GHz Band R&O*, 35 FCC Rcd at 2446, para. 255.

⁶⁰ *Id.* at 2447, para. 259; *800 MHz Order*, 19 FCC Rcd at 15075, para. 200.

relocation costs for the transition as well as a demonstration of the reasonableness of those costs.⁶¹ The Clearinghouse will determine in the first instance whether costs submitted for reimbursement are reasonable.⁶² Parties seeking reimbursement for actual costs must submit to the Clearinghouse a claim for reimbursement, complete with sufficient documentation to justify the amount.⁶³ The Clearinghouse shall review reimbursement requests to determine whether the costs are reasonable and to ensure they comply with the requirements adopted in the *3.45 GHz Band Second R&O*.⁶⁴ The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.

32. Incumbents seeking reimbursement for their actual costs shall provide justification for those costs.⁶⁵ The Clearinghouse shall specify a procedure for the submission of relocation cost documentation. Entities must document their actual expenses and shall submit such documentation pursuant to the procedures specified by the Clearinghouse at any time after those expenses have been incurred. The Clearinghouse may conduct audits of entities that receive reimbursements.⁶⁶ Incumbents receiving reimbursements must make available all relevant documentation upon request from the Clearinghouse.

33. To determine the reasonableness of reimbursement requests, the Clearinghouse may consider the submission and supporting documentation and any relevant comparable reimbursement submissions. If the Clearinghouse determines that the amount sought for reimbursement is impermissible or unreasonable, it shall notify the party of any amount that it deems eligible for reimbursement. Approved, adjusted, or denied claims shall be simultaneously invoiced to the relevant claimant and the 3.45 Service licensees, allowing 30 days for review. To the extent that either a claimant or an 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance.⁶⁷ The Bureau shall resolve any such dispute.⁶⁸ To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any disputes that may arise during the transition. Once the 30-day invoice review period has run and absent any dispute, the Clearinghouse shall disburse approved claims from the reimbursement fund.

34. *Apportionment of Costs Among 3.45 GHz Service Licensees.* The Clearinghouse shall apportion costs among 3.45 GHz Service licensees and distribute payments to incumbent radiolocation licensees pursuant to the cost allocation structure established in the *3.45 GHz Band Second R&O* and the Commission's rules.⁶⁹ Specifically, each 3.45 GHz Service licensee that is granted an initial license (not a renewal) "must pay a *pro rata* portion to reimburse the costs incurred by authorized non-federal, secondary radiolocation licensees for relocating from the 3.3-3.55 GHz band."⁷⁰ These costs shall include "the cost of a clearinghouse's administration of the reimbursement, which the radiolocation licensees will

⁶¹ 47 CFR § 27.1605.

⁶² *Id.* § 27.1605(c).

⁶³ *Id.* § 27.1605(b).

⁶⁴ *Id.* § 27.1605(c).

⁶⁵ *Id.* § 27.1605(b).

⁶⁶ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6826, para. 636 (adopting a mechanism for the Commission or a third-party to audit entities that received reimbursements for the repacking process).

⁶⁷ Subsection 1.4(j) of the Commission's rules shall apply where the deadline for providing written notice to the Bureau of a dispute with respect to a specific invoice falls on a holiday. 47 CFR § 1.4(j).

⁶⁸ *Id.* § 27.1605(d).

⁶⁹ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6044, para. 161; 47 CFR § 27.1604.

⁷⁰ 47 CFR § 27.1604(a).

pay initially and include in their reimbursable costs.”⁷¹ The Clearinghouse shall determine a licensee’s *pro rata* share of relocation costs by dividing the total actual costs of the incumbents’ relocation (as approved by the Clearinghouse), “by the total number of 3.45 GHz Service licenses granted, multiplied by the number of such licenses [a] Licensee will hold.”⁷² Forty-five days after the Clearinghouse has entered into contracts with incumbents and new licensees, the Clearinghouse shall calculate the share of each 3.45 GHz Service licensee based upon the reimbursement documentation received from the incumbents. The initial share shall incorporate any relocation-related costs incurred prior to the issuance of new flexible-use licenses (May 4, 2022) as well as from the time of issuance until the time of calculation. 3.45 GHz Service licensees shall pay their share of the initial relocation payments into a reimbursement fund, administered by the Clearinghouse, within 30 days of receiving an invoice or other written notification of the calculation of their initial share. The Clearinghouse shall draw from the reimbursement fund to pay approved, invoiced claims that are not subject to a dispute before the Bureau.

35. Going forward, the Clearinghouse shall calculate the 3.45 GHz Service licensees’ share of relocation costs at least every six months, with the discretion to calculate the share on a more frequent basis as needed, and provide each licensee with the amount it owes no more than 30 days after each period that it calculates the licensees’ share of relocation costs. Within 30 days of receiving the invoice or other written notification of the calculation of its share, each 3.45 GHz Service licensee shall pay its share of costs into the reimbursement fund. The Clearinghouse shall draw from the reimbursement fund to pay approved reimbursement claims. The Clearinghouse shall pay approved claims 30 days after invoice submission to the relevant claimant and 3.45 GHz Service licensees for their review so long as: (1) funding is available; and (2) there is no dispute regarding the underlying Clearinghouse decision before the Bureau. If the reimbursement fund does not have sufficient funds to pay approved claims before a six-month replenishment, the Clearinghouse shall provide 3.45 GHz Service licensees with 30 days’ notice of the additional shares each must contribute. Any interest arising from the reimbursement fund shall be used to defray the costs of the transition for all 3.45 GHz Service licensees on a *pro rata* basis. At the end of the transition, the Clearinghouse shall return any unused amounts to the 3.45 GHz Service licensees according to their *pro rata* shares.

36. If a 3.45 GHz Service license is relinquished to the Commission prior to all relocation cost reimbursements being paid, the remaining payments will be distributed among the remaining 3.45 GHz Service licensees. If a new license is issued for the previously relinquished rights prior to final transition payments becoming due, the new 3.45 GHz Service licensee will be responsible for the same *pro rata* share of relocation costs as the initial 3.45 GHz Service licensee on a going forward basis from the new license grant date. If a 3.45 GHz Service licensee assigns its rights through the secondary market, the new 3.45 GHz Service licensee will be obligated to fulfill all outstanding and future transition payment obligations associated with the license.

37. 3.45 GHz Service licensees will, collectively, pay for the services of the Clearinghouse and staff.⁷³ The Clearinghouse shall include and itemize its own reasonable costs in the cost estimates it uses to collect reimbursement fund payments from 3.45 GHz Service licensees.⁷⁴ To ensure the Clearinghouse’s costs are reasonable, the Clearinghouse shall provide to the Office of the Managing Director and the Wireless Telecommunications Bureau, by April 1 of each year beginning in 2024, an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse.⁷⁵ It

⁷¹ *Id.*

⁷² *Id.* § 27.1604(b).

⁷³ 47 CFR § 27.1604(a).

⁷⁴ *Id.* § 27.1605(a).

⁷⁵ The audited statement should follow generally accepted accounting procedures (GAAP) or generally accepted government auditing standards (GAGAS).

shall also provide additional financial information as requested by the Office or Bureau to satisfy the Commission's oversight responsibilities and/or agency-specific and government-wide reporting obligations.

38. *Dispute Resolution.* As in the 3.7 GHz transition and consistent with our rules,⁷⁶ the Clearinghouse here will serve in an administrative role and in a function similar to a special master in a judicial proceeding.⁷⁷ In contrast with the *3.7 GHz Band R&O* which enabled the Clearinghouse to mediate any cost disputes or refer the parties to alternative dispute resolution fora, here the Commission directed that any disputes arising from Clearinghouse decisions shall be decided by the Bureau.⁷⁸ We reiterate that to the extent that either a claimant or a 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance.⁷⁹ To the extent that a 3.45 Service licensee wishes to dispute the calculation of its *pro rata* contributions to the reimbursement fund, or any transition-related payment obligation other than a reimbursement claim invoice, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance or other written notification of its payment obligation. To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any disputes that may arise during the transition.

39. *Reports to the Bureau.* The Clearinghouse shall provide certain information and reports to the Commission to facilitate our oversight of the transition.⁸⁰ Each quarter, the Clearinghouse shall submit progress reports to the Bureau that detail the status of reimbursement funds available, the payments issued, and the amounts collected from licensees. The first such report must be filed no later than April 1, 2024. The reports must account for all funds spent, including the Clearinghouse's own expenses (including salaries and fees paid to law firms, accounting firms, and other consultants). The Clearinghouse shall provide to the Wireless Telecommunications Bureau and the Office of the Managing Director additional information upon request.

40. No later than 18 months after the release of this Order, the Clearinghouse must issue a special, audited report identifying any issues that have not already been referred to the Commission as well as what actions, if any, need to be taken for the Clearinghouse to complete its obligations (including the estimated costs and time frame for completing that work).

41. *Bureau Oversight.* To ensure the timely and efficient transition of the band, the Bureau will provide the Clearinghouse with any needed clarifications or interpretations of the Commission's rules or orders issued by the Commission or Bureau. As noted above, the Bureau and the Office of the Managing Director may request any documentation from the Clearinghouse necessary to provide guidance or carry out oversight.

42. The Bureau will issue a Public Notice upon receipt of a request of the Clearinghouse to wind down and suspend operations. If no material issues are raised within 15 days of the release of said Public Notice, the Bureau may grant the Clearinghouse's request to suspend operations on a specific date. 3.45 GHz Service licensees must pay all transition costs incurred and invoiced prior to the date set forth in the Public Notice.

⁷⁶ 47 CFR § 27.1605(a)

⁷⁷ See *3.7 GHz Band R&O*, 35 FCC Rcd at 2449, para. 268; 47 CFR 27.1421(b). Compare 47 CFR § 27.1605(d). Section 27.1605(a)(2) provides that one of the duties of the Clearinghouse include mitigating cost disputes among parties, and while the Clearinghouse is encouraged to informally seek resolution of potential disputes, we clarify that formal disputes arising from Clearinghouse decisions must be decided by the Bureau.

⁷⁸ 47 CFR § 27.1605(d); *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 165.

⁷⁹ Subsection 1.4(j) of the Commission's rules shall apply where the deadline for providing written notice to the Bureau of a dispute with respect to a specific invoice falls on a holiday. 47 CFR §1.4(j).

⁸⁰ See *Id.* § 27.1605(a)(4).

E. Safeguards for Clearinghouse Operation

43. In the *3.7 GHz Band R&O*, the Commission stated that the Clearinghouse should operate “pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to distribute payments in a timely manner.”⁸¹ In addition, the Commission concluded that it needed to “establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements”⁸² and that the Clearinghouse should adopt “robust privacy and data security best practices in its operations.”⁸³ We agree that such measures are likewise appropriate as part of the 3.45 GHz transition.

44. CTIA proposes a series of “appropriate safeguards” to protect all involved stakeholders and “ensure the integrity of the process.”⁸⁴ Given the Commission’s directive in this proceeding to develop and implement a Clearinghouse selection process similar to the process used in the 3.7 GHz proceeding, we conclude those safeguards proposed by CTIA, which are consistent with the processes articulated in the *3.7 GHz Band R&O*, should be adopted here.⁸⁵ Thus, the Clearinghouse here must:

- Process claims consistent with the *3.45 GHz Band Second R&O*, and any clarifications issued by the Commission or the Bureau;⁸⁶
- Operate in a fair and transparent manner;⁸⁷
- Adopt a process for protecting confidential information;⁸⁸
- Hold deposits to minimize the risk of loss, (e.g., all funds collected for reimbursement must be placed in a reputable financial institution and may only be invested in U.S. Treasury bonds);⁸⁹ and
- Specify timing for the reimbursement process.⁹⁰

In addition, consistent with the need to prevent waste, fraud, and abuse in its handling of reimbursement funds, all Clearinghouse accounting related to such funds is subject to an annual audit to be performed by an independent third party selected by the Clearinghouse.⁹¹ The Clearinghouse shall report to the FCC all evidence and/or allegations of suspected fraud, waste, or abuse related to the 3.45 GHz relocation program, along with an initial assessment of their credibility and substantiality. Further, the Clearinghouse shall establish procedures enabling outside parties to report allegations of fraud, waste, or abuse to the RPC, and maintain a log of all such allegations that it receives. Parties seeking to report claims of fraud, waste, and abuse directly to the FCC may do so either by phone (202-418-1940) or electronically (345clearinghouse@fcc.gov).

45. To the extent that any adjustments to the Clearinghouse process or administration are necessary going forward, the Commission delegated authority to the Bureau to make such necessary

⁸¹ *3.7 GHz Band R&O*, 35 FCC Rcd at 2446, para. 255.

⁸² *Id.* at 2447, para. 259.

⁸³ *Id.* at 2451, para. 277.

⁸⁴ CTIA Comments at 3, 4.

⁸⁵ *See 3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163.

⁸⁶ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2447, para. 259; CTIA Comments at 4.

⁸⁷ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2447, para. 259; CTIA Comments at 4, 9.

⁸⁸ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2451, para. 277; CTIA Comments at 4.

⁸⁹ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2451, para. 276; CTIA Comments at 8.

⁹⁰ *Id.* at 2448, para. 264; CTIA Comments at 8.

⁹¹ *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2447, para. 259; CTIA Comments at 4.

modifications.⁹² Should the Clearinghouse violate or otherwise fail to comply with the Commission's rules, the Clearinghouse's authority to operate may be terminated and, subject to the delegated authority discussed above, the selection of a new clearinghouse may be initiated.⁹³

F. CTIA Waiver Requests

46. CTIA requests that certain rules relating to the operation of the Clearinghouse be waived in order to allow reimbursement payments directly from 3.45 GHz Service licensees to incumbent radiolocation service operators⁹⁴ and to permit the Bureau to determine allowable costs for reimbursement as an initial matter.⁹⁵ If granted, CTIA's requests would strip the Clearinghouse of its core functions—determining reasonable reimbursement costs, billing and collecting reimbursement funds from new entrants, and disbursing payments to incumbents—and would reduce the Clearinghouse's role to essentially an accounting function. We find that CTIA's requests are not for waivers but rather appear to seek rule changes. As such, they are essentially untimely requests to reconsider decisions made by the Commission in the *3.45 GHz Band Second R&O* and are beyond the scope of the authority delegated to the Bureau in establishing procedures to select and administer a Clearinghouse. We therefore dismiss CTIA's requests.

IV. PROCEDURAL MATTERS

47. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁹⁶ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁹⁷ Accordingly, the Bureau has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) concerning the possible impact of the rule changes contained in this Order on small entities. The Supplemental FRFA is set forth in Appendix A.

48. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

49. *Paperwork Reduction Act Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been 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 were invited to comment on the new or modified information collection requirements contained in this proceeding. No such comments were received and the information collection was approved on October 19, 2021. 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. In this

⁹² *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163.

⁹³ *See* 47 CFR § 27.1605(d); *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6045, para. 163.

⁹⁴ Section 27.1604(c) provides that a “[l]icensee's relocation reimbursement contribution share must be paid to the clearinghouse by the date(s) and subject to procedures specified by public notice.”

⁹⁵ Section 27.1605(c), gives the Clearinghouse “the authority to determine whether particular expenses are eligible for reimbursement.”

⁹⁶ 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁹⁷ 5 U.S.C. § 605(b).

present document, we have assessed the effects of the Clearinghouse search process and find that it will not have any disproportional impact on businesses with fewer than 25 employees.

V. ORDERING CLAUSES

50. Accordingly, IT IS ORDERED that, pursuant to sections 2, 4(i), 5(c), 157, 301, 303, 307, 308, 309, of the Communications Act of 1934, as amended, as well as the Commercial Spectrum Enhancement Act, Pub. L. 108-494, 118 Stat. 3986 (Dec. 23, 2004) as amended, and the MOBILE NOW Act, Pub. L. 115-141, 132 Stat. 1098, Div. P, Title VI, § 603 (Mar. 23, 2018), 47 U.S.C. §§ 152, 154(i), 155(c), 157, 301, 303, 307, 308, 309, 309(j)(3)(B), 309(j)(4)(D), 923(g), 928, 1502, by the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020, Pub. L. 116-260, Division FF, Title IX, Sec. 905, and by the authority delegated in paragraph 163 of the *3.45 GHz Second R&O*, this Order IS HEREBY ADOPTED.

51. IT IS FURTHER ORDERED, that, pursuant to the authority delegated in sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, CTIA's Waiver Requests are DENIED.

52. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

53. IT IS FURTHER ORDERED that this Order shall be effective 30 days after publication in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt, Acting Chief
Wireless Telecommunications Bureau

APPENDIX A

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Search Committee Public Notice* released in August 2021.² The Commission sought written public comment on the proposals in the *Search Committee Public Notice*, including comment on the Supplemental IRFA. The Supplemental IRFA incorporated by reference the Regulatory Flexibility Analyses prepared in the *3.45 GHz R&O and FNPRM*³ and the *3.45 GHz Second R&O*⁴, relating to rules making mid-band spectrum available for flexible-use, and relocation of secondary, non-federal radiolocation licensees from the 3.45 GHz band. No comments were filed addressing the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *3.45 GHz R&O and FNPRM* and the *3.45 GHz Second R&O* to reflect actions taken in the *Clearinghouse Search Committee Order* and conforms to the RFA.⁵

A. Need for, and Objective of, the Order

2. The Wireless Telecommunications Bureau's (Bureau) *Clearinghouse Search Committee Order* identifies four entities, NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA, and Competitive Carriers Association (CCA), that will form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary, non-federal radiolocation licensees relocating from the 3.45-3.55 GHz band (3.45 GHz band). In addition, the Bureau adopts certain requirements regarding the search committee process and the Clearinghouse, including the number of search committee seats and membership, the search committee voting process, the solicitation requirements and deadlines for selection of the Clearinghouse, the duties of the Clearinghouse, and safeguards for operation of the Clearinghouse.

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

3. There were no comments filed in response to the proposed rules and policies presented in the Supplemental IRFA.

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

4. 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.⁶

¹ 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).

² *Wireless Telecommunications Bureau Seeks Comment on the Selection Process for and Operation of the Reimbursement Clearinghouse for the 3.45 GHz Band*, Public Notice, DA 21-1024, 5 (WTB Aug. 20, 2021) (*Search Committee Public Notice*).

³ *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078 (2020) (*3.45 GHz Band R&O and FNPRM*).

⁴ *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987 (2021) (*3.45 GHz Band Second R&O*).

⁵ See 5 U.S.C. § 604.

⁶ 5 U.S.C. § 604 (a)(3).

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

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

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, adopted herein.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ 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.¹⁰

7. Regulatory Flexibility Analyses were incorporated in the *3.45 GHz R&O and FNPRM* and the *3.45 GHz Second R&O*. In those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities that might be significantly affected by the *Clearinghouse Search Committee Order* from the Regulatory Flexibility Analyses in the *3.45 GHz R&O and FNPRM* and the *3.45 GHz Second R&O*.

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

8. The *Clearinghouse Search Committee Order* identifying the four entities that will form the search committee to select a Clearinghouse to oversee the reimbursement of relocation expenses for certain secondary, non-federal radiolocation licensees relocating from the 3.45-3.55 GHz band (3.45 GHz band) and the requirements adopted involving the search committee process and the Clearinghouse will not impose any new reporting or recordkeeping obligations on small entities. Further, we do not expect that the *Clearinghouse Search Committee Order* will result in small entities having to hire professionals. The reporting, recordkeeping, and/or other compliances requirements that may impact any small entity serving on the Clearinghouse selection committee relates to their work as a member of the search committee not as a licensee in the 3.45 GHz band. Further, the contracts that the Clearinghouse selectee must enter into with incumbent and new entrant licensees are required to be submitted by the Clearinghouse selectee. Similarly, the reports and other information discussed in the *Clearinghouse Search Committee Order* that must be submitted to the Bureau are required to be submitted by the Clearinghouse.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the

⁷ 5 U.S.C. § 604(a)(4).

⁸ 5 U.S.C. § 601(6).

⁹ See 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.”

¹⁰ 15 U.S.C. § 632.

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”¹¹

10. The Bureau has taken several steps to help minimize any economic impact on small entities. In the *Clearinghouse Search Committee Public Notice*, the Bureau specifically sought comment on whether or how small entities’ interests could best be represented on the selection committee, given that all new flexible-use licensees, regardless of size, will have to pay a pro-rata share of non-federal radiolocation incumbents’ reasonable relocation expenses. As a result, in the *Clearinghouse Search Committee Order*, the Bureau included CCA on the selection committee in response to commenters’ suggestions that a seat on the committee be held by an entity that could represent the interests of small and rural entities in the 3.45 GHz band and CCA’s indication of interest to serve on the committee. All members of the search committee, including CCA, have an equal vote on the committee. To the extent that specific issues arise in the Clearinghouse selection process that have a significant economic on impact small entity licensees, the *Clearinghouse Search Committee Order* finds that CCA will be best positioned to advocate on their behalf.

11. The payment schedule for 3.45 GHz Service licensees to reimburse the costs of relocation of non-federal radiolocation incumbents adopted by the Bureau should also minimize the economic impact for small entity licensees. Pursuant to the schedule adopted in the *Clearinghouse Search Committee Order*, small entities and other 3.45 GHz Service licensees will not be required to make the initial pro-rata payment into the reimbursement fund until at least mid-October 2023. The Clearinghouse is required to calculate the share of each flexible-use licensee 45 days after it has entered into the relevant contracts with incumbents and new entrants, and 3.45 GHz Service licensees have 30 days after receiving the calculation of their initial share to submit the initial relocation payment to the reimbursement fund administered by the Clearinghouse. Thereafter, the pro-rata payments by 3.45 GHz Service licensees will be calculated at least every six months, and licensees will have 30 days after receiving the calculation to make payment. While there are alternative payment approaches the Bureau could have adopted, the Bureau believes the adopted approach serves the best interest of relocated incumbents and flexible-use licensees.

12. Finally, to ensure that the Clearinghouse’s costs which are included in the pro-rata relocation reimbursement payment calculation for small entities and other 3.45 GHz Service licensees are reasonable, the *Clearinghouse Search Committee Order* requires the Clearinghouse to provide the Office of the Managing Director (OMD) and the Bureau an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse, of each year. The Clearinghouse is also required to provide OMD or the Bureau any additional requested information deemed necessary to satisfy the Commission’s oversight responsibilities and reporting obligations.

G. Report to Congress

The Commission will send a copy of the *Clearinghouse Search Committee Order*, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.¹² In addition, the Commission will send a copy of the *Clearinghouse Search Committee Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Clearinghouse Search Committee Order* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹³

¹¹ 5 U.S.C. § 604(a)(6).