

FCC FACT SHEET*
Cellular Service Reform

Third Report and Order – WT Docket Nos. 12-40 and 16-138

Background: Part 22 of the Commission’s rules contains the original commercial wireless service rules governing the 800 MHz Cellular Service, Paging and Radiotelephone Service, and Air-Ground Service, among others. Several of the legacy regulations contained in Part 22 impose burdens that have become outdated and that are not imposed on newer commercial wireless services.

What the Third Report and Order Would Do:

- Adopt reforms that promote regulatory consistency across competing commercial wireless services
- Delete administrative and recordkeeping rules for all Part 22 licensees concerning (1) station inspections; (2) retention of hard copies of station authorizations and other station records; and (3) the requirement to have station control points for each license and personnel on duty at those control points.
 - Removing these provisions, which were adopted more than two decades ago, will eliminate needless burdens that are inconsistent with the Commission’s practices and the predominant use of electronic records storage and access.
- Delete duplicative rules regarding operation of mobile stations, operational control of mobile devices, and equal employment opportunity regulations.

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

In the Matter of)
)
Amendment of Parts 1 and 22 of the Commission's) WT Docket No. 12-40 (terminated)
Rules with Regard to the Cellular Service,)
Including Changes in Licensing of Unserved Area) RM No. 11510 (terminated)
)
Amendment of the Commission's Rules with)
Regard to Relocation of Part 24 to Part 27)
)
Interim Restrictions and Procedures for Cellular)
Service Applications)
)
Amendment of Parts 0, 1, and 22 of the)
Commission's Rules with Regard to Frequency)
Coordination for the Cellular Service)
)
Amendment of Part 22 of the Commission's Rules)
Regarding Certain Administrative and Filing)
Requirements)
)
Amendment of the Commission's Rules Governing) RM No. 11660 (terminated)
Radiated Power Limits for the Cellular Service)
)
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95,) WT Docket No. 10-112
and 101 to Establish Uniform License Renewal,)
Discontinuance of Operation, and Geographic)
Partitioning and Spectrum Disaggregation Rules)
and Policies for Certain Wireless Radio Services)
)
2016 Biennial Review of Telecommunications) WT Docket No. 16-138
Regulations)

THIRD REPORT AND ORDER*

Adopted: []

Released: []

* This document has been circulated for tentative consideration by the Commission at its July 12, 2018 open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

By the Commission:

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I. INTRODUCTION

1. In this Third Report and Order, we take additional steps to reduce unnecessary regulatory burdens for licensees in the 800 MHz Cellular Radiotelephone (Cellular) Service as well as other Part 22 licensees, thereby freeing up more resources for investment in new technologies and greater spectrum efficiency to meet increasing consumer demand for advanced wireless services. Specifically, we modernize our rules by eliminating several Part 22 record-keeping and reporting obligations that were adopted more than two decades ago—obligations for which there is no longer a benefit to outweigh the compliance costs and burdens imposed on licensees. We also eliminate certain Cellular Service-specific rules that are no longer necessary. Our revisions today will provide Cellular and other Part 22 licensees with enhanced flexibility and advance our goal of ensuring more consistency in licensing across commercial wireless services, while taking into account unique features of each service. With this Third Report and Order we conclude an important chapter in the Commission’s extensive regulatory reform agenda and terminate the proceeding in WT Docket No. 12-40, including RM Nos. 11510 and 11660.

II. BACKGROUND

2. In 1981, the Commission adopted its initial Cellular Service rules; these provided the foundation of the commercial wireless industry and made mobile services broadly available to the American public nationwide.¹ In 2012, the Commission released a Cellular Reform *Notice of Proposed Rulemaking*, which was intended to modernize the legacy site-based Cellular licensing scheme and transition it to a geographically based licensing model.² In 2014, the Commission adopted a *Report and*

¹ See generally *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission’s Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 86 F.C.C.2d 469 (1981).

² *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission’s Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications*, WT Docket No. 12-40, RM No. 11510, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 1745, 1747 n.3, 1750-52, 1758 (2012) (*NPRM*). Under the legacy site-based model, applications with comprehensive technical data and prior FCC approval had been required

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Order (R&O), which modernized Cellular Service licensing in several respects.³ The centerpiece of the *R&O* was the adoption of a geographically-based licensing regime, with licenses based on Cellular Geographic Service Area (CGSA) boundaries; this added significant new flexibility for licensees to improve their systems within those boundaries.⁴ The *R&O* also added significant opportunities for licensees to expand their service coverage without prior authorization, resulting in a substantial reduction in administrative burdens for both licensees and FCC staff.⁵ In the *Further Notice*, the Commission proposed additional Cellular licensing reforms and overdue reforms of the Cellular radiated power and related technical rules that could facilitate the ability of Cellular licensees to deploy advanced broadband services.⁶

3. In the 2017 *Second Report and Order*, the Commission modernized numerous Cellular technical rules, including the outdated radiated power and related rules, to permit power measurement using power spectral density.⁷ These changes facilitate the use of Cellular spectrum to provide advanced mobile broadband services, such as 4G long term evolution (LTE), while protecting public safety communications from increased potential for unacceptable interference.⁸ The *Second R&O* also revised rules to further eliminate unnecessary filings and other regulatory burdens for Cellular licensees.⁹ The Commission's reforms resulted in Cellular Service rules more akin to the flexible licensing schemes found in other similar mobile services, such as the Broadband Personal Communications Service (PCS),¹⁰

for new Cellular systems and for modifications of an existing system that would expand the licensee's authorized Cellular Geographic Service Area (CGSA), no matter how slight the expansion. Based on Commission data when it released the *NPRM*, approximately 80 percent of the 1,468 Cellular Market Area (CMA) channel blocks were almost completely licensed already, with only limited unlicensed area remaining, primarily in Alaska and other rural areas in the western United States. See *NPRM*, 27 FCC Rcd at 1747, 1750-55, 1768-1769.

³ *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, et al.*, WT Docket No. 12-40, RM Nos. 11510 and 11660, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 14100 (2014) (*R&O* and *Further Notice*, respectively).

⁴ See the *R&O* for the full discussion of the revised rules adopted (29 FCC Rcd at 14102-26 (Section II) and 14156-63 (Appendix A (Final Rules))).

⁵ See *R&O*, 29 FCC Rcd at 14115-18. The *R&O* also established a field strength limit rule tailored to reflect the continued ability to expand Cellular service area coverage. See *id.*, 29 FCC Rcd at 14109-10.

⁶ *Further Notice*, 29 FCC Rcd at 14126-52.

⁷ See *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications; Amendment of Parts 0, 1, and 22 of the Commission's Rules with Regard to Frequency Coordination for the Cellular Service; Amendment of the Commission's Rules Governing Radiated Power Limits for the Cellular Service; 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; 2016 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 12-40, 10-112, and 16-138, RM Nos. 11510 and 11660, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518 (2017). Herein, we reference the Second Report and Order and the Report and Order collectively as "*Second R&O*"; we reference the Second Further Notice of Proposed Rulemaking as "*Second Further Notice*."

⁸ *Second R&O*, 32 FCC Rcd at 2535-56; see also *id.* at 2562-64.

⁹ *Second R&O*, 32 FCC Rcd at 2557-61, 2567-70 (adopting a more flexible rule concerning permanent discontinuance of operations, eliminating certain filing requirements for minor system changes, and deleting the Part 22 rules pertaining to Cellular Service license renewals).

¹⁰ See generally 47 CFR §§ 24.1 *et seq.*

(continued....)

the commercial service in the 700 MHz band (700 MHz Service),¹¹ the 600 MHz Service,¹² and the Advanced Wireless Services (AWS),¹³ to help ensure that carriers are treated similarly regardless of technology choice.

4. In the *Second Further Notice*, to build on reforms adopted in the *R&O* and *Second R&O* and to respond to certain submissions by commenters in the Commission's 2016 Biennial Review proceeding,¹⁴ the Commission proposed and sought comment on additional reforms of its Part 22 rules governing not only the Cellular Service but other Part 22 Public Mobile Services (PMS) as well.¹⁵ The Commission also invited comment on whether other measures could be taken to allow Part 22 licensees to benefit from the same level of flexibility available to other commercial wireless licensees.¹⁶ In that context, the Commission raised the possibility of relocating—to Part 27 of the Commission's rules—certain Part 22 rules, as well as the Part 24 PCS rules and other rules governing geographically licensed wireless services.¹⁷

5. In response to the *Second Further Notice*, five parties filed comments and one party filed reply comments; three parties subsequently filed *ex parte* letters.¹⁸ Commenters generally support the Commission's proposed deletion of the Part 22 rules addressed in the *Second Further Notice*. Only two commenters address the issue of possible relocation of rules to Part 27 and possible reorganization of that rule part—one favoring the idea and the other opposing it. In addition, some commenters propose deleting other rules that had not been previously considered by the Commission in this proceeding. The record and our decisions are set forth below under specific headings pertaining to these various rules and issues.

III. ELIMINATION OF UNNECESSARY RULES

6. In the sections below, we delete the following administrative and record-keeping rules for Part 22 licensees: Sections 22.301 and 22.303, concerning station inspections and the retention of hard copies of station authorizations and other station records; and Section 22.325, concerning station control points and personnel on duty at those control points.¹⁹ Removing these provisions will eliminate needless burdens that are inconsistent with the Commission's practices and the now predominant use of electronic records storage and access, and it will also eliminate asymmetry across competing commercial mobile radio services (CMRS), as the Commission's rules for newer wireless services such as PCS, certain AWS,

¹¹ See generally 47 CFR Part 27.

¹² See generally *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*BIA Report and Order*) (subsequent history omitted); 47 CFR § 27.5(l).

¹³ See generally 47 CFR Part 27.

¹⁴ *Second Further Notice*, 32 FCC Rcd at 2570-75. The Commission had solicited comments in a public notice in its 2016 Biennial Review of Telecommunications Regulations proceeding. *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, WT Docket No. 16-138 (other docket numbers omitted), Public Notice, 31 FCC Rcd 12166, 12174-75 (2016) (*Biennial Review PN*). Although the Commission has considered in this Cellular Reform proceeding certain issues that were initially raised by commenters in response to the *Biennial Review PN* in WT Docket No. 16-138 (WT Biennial Review proceeding), such consideration does not otherwise impact review of other comments and issues raised in response to that *PN*.

¹⁵ The other services governed by Part 22 of our rules are Paging, Air-Ground, Rural Radiotelephone, and Offshore Radiotelephone.

¹⁶ *Second Further Notice*, 32 FCC Rcd at 2571, 2574.

¹⁷ *Second Further Notice*, 32 FCC Rcd at 2574-75

¹⁸ See Appendix C for a list of parties that submitted comments, reply comments, and *ex parte* letters.

¹⁹ 47 CFR §§ 22.301, 22.303, 22.325.

and the 700 MHz Service do not include such provisions. We also delete Section 22.321, concerning equal employment opportunities, as duplicative, as well as Sections 22.3 and 22.927, which set forth service provider obligations concerning their authorizations and subscribers' Cellular mobile stations.²⁰ These rules are no longer necessary, as explained below.

A. Sections 22.301, 22.303—Station Inspection, Retention of Station Authorizations

7. In the *Second Further Notice*, the Commission proposed and sought comment on deletion of Sections 22.301 and 22.303 of the Commission's rules, which collectively require that hard copies of license authorizations and other records be maintained by all Part 22 licensees for each station and that such records and the station itself be made available for inspection upon request.²¹ The Commission questioned whether the benefits of maintaining hard copies outweigh the costs and burdens to Part 22 licensees in the age of electronic licensing and recordkeeping, particularly as license authorizations are maintained in the Commission's Universal Licensing System (ULS).²² The Commission also sought comment on a suggestion that, even if we eliminate Sections 22.301 and 22.303, we should nonetheless affirmatively require Part 22 licensees "to have electronic copies [of licenses] easily accessible to personnel and FCC inspectors."²³

8. Commenters addressing this issue unanimously endorse the Commission's proposal to delete Sections 22.301 and 22.303; they assert that these administrative requirements are burdensome and inconsistent with today's licensing practices.²⁴ AT&T and Verizon point out that, since 2014, the Commission has deemed the electronic version of an authorization—stored in ULS—to be the official Commission record, and it no longer sends printed copies of authorizations through the U.S. Postal Service unless so requested by the licensee.²⁵ The Enterprise Wireless Alliance (EWA) adds that a

²⁰ 47 CFR §§ 22.321, 22.3, 22.927.

²¹ *Second Further Notice*, 32 FCC Rcd at 2571-72 (citing comments submitted by CTIA and Verizon in response to the *Further Notice*, and by CTIA and T-Mobile USA, Inc. in response to the *Biennial Review PN*). Section 22.301 specifically requires that, "[u]pon reasonable request, the licensee of any station authorized in the Public Mobile Services must make the station and station records available for inspection by authorized representatives of the Commission at any reasonable hour." 47 CFR § 22.301. Noting the rule's requirement that the *station itself*, not just the stations' records, be available for inspection by the Commission, the Commission emphasized that, regardless of whether we retain a rule in Part 22 explicitly requiring licensees to make their stations available for inspection, we retain our general station inspection authority under Section 303(n) of the Communications Act, 47 U.S.C. § 303(n). See *Second Further Notice*, 32 FCC Rcd at 2572. Section 22.303 more broadly requires Part 22 licensees to retain, among other documentation, the authorization for each station as a permanent part of station records.

²² *Second Further Notice*, 32 FCC Rcd at 2572.

²³ *Second Further Notice*, 32 FCC Rcd at 2572 (citing comments submitted by Public Knowledge in the WT Biennial Review proceeding). Public Knowledge did not submit comments or reply comments following release of the *Second Further Notice*.

²⁴ AT&T Comments at 2-3 (May 15, 2017); CMA Comments at 2-3 (May 15, 2017); CTIA Comments at 2-4 (May 15, 2017); EWA *Ex Parte* Letter at 2-3 (June 15, 2017); Verizon Comments at 2-3 (May 15, 2017). EWA's submission (styled as "Reply Comments") was filed outside the pleading cycle (see Federal Register (82 Fed. Reg. 17959 (April 14, 2017) (summarizing the *Second Further Notice* and establishing the pleading cycle)). We consider EWA's submission as an *ex parte* letter in the interest of having a complete record, ensuring full and fair participation in this proceeding.

²⁵ AT&T Comments at 2 (citing *Wireless Telecommunications Bureau Implements Enhancements to the Commission's Universal Licensing System and Antenna Structure Registration System and Adopts Final Procedures for Providing Access to Official Electronic Authorization*, WT Docket No. 14-161, Public Notice, 29 FCC Rcd 15252 (WTB 2014) (*Official Electronic Authorizations PN*); Verizon Comments at 2 (citing same). See also EWA *Ex Parte* Letter at 3.

“physical copy of a license can never be more and could be less up-to-date than ULS data.”²⁶ The commenters further argue that, with the movement to geographic-based licensing (which provides licensees with the flexibility to make certain changes to their systems without Commission filings), individual authorizations are no longer relevant and may not include all operating parameters.²⁷ This fact of current-day operations, the Critical Messaging Association (CMA) claims, can create problems when state and local officials, unfamiliar with the Commission’s geographic licensing model, do not find paper records at stations to reflect all sites as operated, leading in some cases to erroneous accusations by such authorities of unauthorized operations.²⁸

9. *Discussion.* We find that Sections 22.301 and 22.303 have outlived the usefulness they may have had in the past and now impose administrative burdens without any corresponding public benefit. Because the Commission no longer routinely mails printed authorizations, licensees cannot comply with the rule’s hard-copy requirement unless they themselves print, or request that the Bureau print and mail, an authorization every time an application is granted. Such a requirement does not serve the public interest. ULS is available electronically at all times: licensees have access to their official authorizations, while members of the public have access to reference copies reflecting the most up-to-date information concerning all authorizations.²⁹ And as AT&T observes, the movement away from site-specific filings renders on-site comparison of paper records and operating parameters unnecessary and largely infeasible.³⁰ Moreover, the Commission has not imposed the record-keeping and station inspection requirements of Sections 22.301 and 22.303 on licensees in competing wireless services governed by Parts 24 and 27 of our rules. For all these reasons, we delete both of these rules.³¹

B. Section 22.325—Control Points

10. Section 22.325 of the Commission’s rules requires that “[e]ach station in the Public Mobile Services [] have at least one control point and a person on duty who is responsible for station operation.”³² The Commission proposed and sought comment on eliminating Section 22.325 in the *Second Further Notice*.³³ It queried whether today automatic and remote monitoring render this rule

²⁶ EWA *Ex Parte* Letter at 3.

²⁷ E.g., AT&T Comments at 2-3 (noting, at 3, that internal base stations whose Service Area Boundaries (SABs) “do not comprise the outer edge” of the CGSA are no longer issued site-specific authorizations, and that even a Cellular Service station that defines the SAB might today have a license that no longer includes all operating parameters,” because Cellular licensees can now operate much like Part 24 and Part 27 licensees without having to report every modification to a system).

²⁸ CMA Comments at 2. According to CMA, while deleting the two rules might not “100% solve that problem,” it would at least remove the “ostensible . . . requirement that all such sites be reflected” in hard copy records retained at every station. *Id.* at 2-3.

²⁹ *Official Electronic Authorizations PN*, 29 FCC Rcd at 15252-53.

³⁰ AT&T Comments at 2-3.

³¹ See Final Rules (Appendix A). As was also noted in the *Second Further Notice*, the Commission retains station inspection authority under 47 U.S.C. § 303(n). With respect to Public Knowledge’s request, given that electronic copies of authorizations are easily accessible to the public and FCC inspectors via ULS, we see no need to require Part 22 licensees “to have electronic copies [of licenses] easily accessible to personnel and FCC inspectors.” See *supra* note 23.

³² 47 CFR § 22.325. While the rule does not require that the person on duty be at the control point or continuously monitor all transmissions of the station, the control point must have facilities that enable the person on duty to turn off the transmitters in the event of a malfunction.

³³ *Second Further Notice*, 32 FCC Rcd at 2573.

unnecessary from a technological standpoint.³⁴

11. Commenters addressing this issue agree with the proposal to delete this rule on grounds that it does not reflect licensees' existing automatic and remote monitoring facilities and is unnecessary.³⁵ AT&T adds that Cellular licensees have "developed extensive expertise in working with their counterparts" to comply with Commission rules governing coordination with adjacent channel and adjacent market licensees, interference avoidance, especially with respect to Part 90 public safety licensees operating in the 800 MHz band, and international agreements.³⁶ EWA contends that "licensees have every incentive to ensure that their facilities are operating properly and in compliance with FCC requirements," and the Commission "no longer needs to prescribe how licensees must accomplish that task."³⁷

12. *Discussion.* Based on the record before us, we find that Section 22.325 is now technologically obsolete, as licensees today routinely monitor their network operations by automatic and remote mechanisms. And one commenter claims that the rule inhibits efficiencies in licensees' operations.³⁸ We therefore conclude that Section 22.325 no longer serves the public interest. As with Sections 22.301 and 22.303, discussed above, there is no similar provision in Part 24 or Part 27 of the Commission's rules related to station control points or the requirement to have a person on duty who is responsible for station operation. Part 22 licensees should have the same flexibility as Part 24 and Part 27 commercial wireless licensees to determine how to manage their networks to ensure compliance with the Commission's rules, including how best to avoid interference. Accordingly, we delete Section 22.325.³⁹

C. Section 22.321(c)—Equal Employment Opportunities

13. Section 22.321(c) requires all Part 22 licensees (i.e., PMS licensees), regardless of their size, to submit an annual report to the Commission indicating whether any EEO complaints have been filed at the federal, state, or local level against the licensee.⁴⁰ For any such complaint, the report must state the parties involved, date of filing, court or agencies reviewing the complaint, appropriate file number, and disposition of the complaint.⁴¹ All common carriers (i.e., not only Part 22 licensees) with at least 16 full-time employees are subject to the same requirement under Section 1.815 of the Commission's rules, which specifies that an annual employment report is to be submitted on FCC Form 395.⁴² Pursuant to comments on the record in the WT Biennial Review proceeding arguing that Section

³⁴ *Second Further Notice*, 32 FCC Rcd at 2573.

³⁵ See AT&T Comments at 3 (stating that Cellular licensees "remotely monitor their network usage and operation and by necessity retain the ability to deactivate the radios as needed in the event of interference"); CMA Comments at 3 (stating that automatic and remote monitoring facilities are "routinely used by CMA members"); CTIA Comments at 3-4 (asserting that the rule is unique to Part 22 and is "another example of unnecessary and asymmetrical regulation," and that most licensees have centralized operations); EWA *Ex Parte* Letter at 4; Verizon Comments at 3 (stating that it maintains "Network Operations Centers that monitor all of its Commission-licensed operations and have the ability to power down transmitters due to malfunction . . . or any other reason," and claiming that this network architecture "is commonplace among wireless carriers.").

³⁶ AT&T Comments at 3.

³⁷ EWA *Ex Parte* Letter at 4.

³⁸ See, e.g., CMA Comments at 3 (indicating that CMA members routinely use automatic and remote monitoring facilities and that Section 22.325 "should be deleted as an unnecessary regulation that inhibits efficiencies in critical messaging operations").

³⁹ See Final Rules (Appendix A).

⁴⁰ 47 CFR § 22.321(c).

⁴¹ 47 CFR § 22.321(c).

⁴² 47 CFR § 1.815.

22.321(c) should be repealed, the *Second Further Notice* sought comment on whether there is any need to retain this provision.⁴³

14. While the WT Biennial Review comments regarding EEO requirements focused on Section 22.321, Section 90.168 of the Commission's rules, "Equal Employment Opportunities," contains the same provisions as those in Section 22.321, including paragraph (c), which requires a complaints report annually regardless of the licensee's size. Section 90.168 states that it applies to *all* CMRS (which includes the Part 22 PMS), and thus it entirely subsumes Section 22.321.

15. AT&T, CMA, EWA, and Verizon endorse the Commission's proposal to delete Section 22.321(c),⁴⁴ with CMA also asserting that, if the Commission eliminates Section 22.321(c), then common carrier licensees and permittees with fewer than 16 full-time employees would no longer be subject to an EEO complaints report filing requirement at the Commission.⁴⁵ None of the commenters in this Cellular Reform proceeding or the WT Biennial Review proceeding addressed Section 90.168.

16. *Discussion.* Given that all CMRS licensees are subject to Section 90.168, including Section 90.168(c), Section 22.321 is duplicative and, accordingly, we delete the rule in its entirety.⁴⁶ As to the Part 90 reporting requirement, the Commission did not propose to remove that requirement, nor did any commenters suggest doing so. Part 90 rules are therefore beyond the scope of this proceeding and we decline at this time to eliminate the complaints reporting requirement in Section 90.168.⁴⁷

D. Section 22.927—Responsibility for Mobile Stations, and Section 22.3—Authorization Required

17. As noted above, the *Second Further Notice* invited comment generally on other steps or measures the Commission could take to ensure that Cellular licensees benefit from the same level of flexibility available to other commercial wireless licensees.⁴⁸ In response, CTIA argues that repeal of Section 22.927, entitled "Responsibility for mobile stations,"⁴⁹ would be "consistent with this objective,"

⁴³ *Second Further Notice*, 32 FCC Rcd at 2573 (citing Verizon Biennial Review Comments). The *Second Further Notice* did not seek comment on the other subsections of Section 22.321, which set forth licensee obligations for equal opportunity programs and policies to assure nondiscriminatory practices in recruitment, placement, promotion, and other areas of employment practices. 47 CFR § 22.321.

⁴⁴ See AT&T Comments at 4; CMA Comments at 3-4 (arguing that deletion of Section 22.321(c)'s complaints report requirement for licensees with fewer than 16 employees is warranted); EWA *Ex Parte* Letter at 3-4 (arguing that deletion of Section 22.321(c)'s complaints report requirement for licensees with fewer than 16 employees is warranted, and asserting that Section 22.321 is unnecessary in its entirety); Verizon Comments at 4-5 (arguing that deletion of Section 22.321(c) is a "good first step," but that the Commission should go further and eliminate Section 1.815 as well).

⁴⁵ CMA Comments at 3. See also EWA *Ex Parte* Letter at 3-4.

⁴⁶ See Final Rules (Appendix A). As noted above, Verizon also argues that Section 1.815 should be deleted (Verizon Comments at 4-5). Verizon's request is beyond the scope of this proceeding, and we decline to consider it here.

⁴⁷ In any event, neither CMA nor EWA adequately demonstrates why licensees with fewer than 16 employees should be exempt from this requirement; they merely claim that complaints are rarely filed against small carriers with fewer than 16 employees. CMA Comments at 3; EWA *Ex Parte* Letter at 4.

⁴⁸ *Second Further Notice*, 32 FCC Rcd at 2573 (asking specifically if commenters deem unnecessary any other rules that apply to Part 22 licensees but not to the flexibly licensed services under Part 24 or 27).

⁴⁹ 47 CFR § 22.927.

because the rule is another example of asymmetric regulation.⁵⁰ Under Section 22.927, Cellular licensees are “responsible for exercising effective operational control over mobile stations receiving service through their Cellular systems,” including mobile stations operated by subscribers to a different Cellular licensee. Section 22.927 thus addresses service to “roamers,” although it does not use that particular term.

18. *Discussion.* Pursuant to Section 1.903(c) of the Commission’s rules, the “[a]uthority for subscribers to operate mobile or fixed stations in the Wireless Radio Services [WRS],” which includes the Cellular Service, “is included in the authorization held by the licensee providing service to them.”⁵¹ Thus, when a WRS licensee, as the host carrier, provides service to a subscriber of another carrier (i.e., a subscriber that is outside its own provider’s service area), the subscriber’s use of his or her mobile phone to access the spectrum falls under that host carrier’s authorization. Section 1.903(c) thus captures the purpose underlying Section 22.927, albeit with less detail.⁵² While the detailed provision in Section 22.927 regarding the host carrier’s responsibility under its authorization may have been warranted when the Cellular Service was in its nascency, we find that this additional rule is unnecessary these many decades later. As CTIA observes, the rule creates asymmetry, as the rules for commercial wireless services established much later than the Cellular Service—such as PCS and AWS—do not have a counterpart to Section 22.927. Consistent with one of our key goals in this proceeding to eliminate unnecessary asymmetric regulations, we delete Section 22.927.⁵³

19. Further, a related legacy rule that applies to all Part 22 licensees, Section 22.3,⁵⁴ is also no longer necessary. This rule specifies that PMS stations must be used and operated only in accordance with applicable Commission rules and only with a valid authorization granted by the Commission. It further specifies that authority for subscribers to operate mobile or fixed PMS stations is included in the authorization of the licensee providing service to them. The same provisions are included in the later-adopted Section 1.903, which applies more broadly to numerous wireless services in addition to the PMS.⁵⁵ We therefore find it in the public interest to delete it from our rules as duplicative.⁵⁶

IV. POSSIBLE RELOCATION OF RULES TO PART 27

20. The Commission sought comment in the *Second Further Notice* on whether to migrate the Part 22 Cellular and Part 24 PCS rules to Part 27, and on whether the Commission should initiate a separate rulemaking to revise the Part 27 rules and reserve the possible relocation of Cellular and PCS

⁵⁰ CTIA Comments at 4-5. CTIA also argues that the rule is “superfluous” because, according to CTIA, licensees are subject to “specific technical and operating rules set forth elsewhere in Parts 1, 20, and 22 of the Commission’s rules,” but does not cite to any specific rules in support of its statement. *See id.*

⁵¹ 47 CFR § 1.903(c) (indicating limited exceptions not relevant here). Section 1.903 was adopted in 1998 as part of an omnibus consolidation, revision, and streamlining of Commission rules governing license application procedures for many wireless services, to facilitate full implementation of what was then the Commission’s new ULS. *See Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, et al.*, Report and Order, WT Docket No. 98-20 (other docket nos. omitted), 13 FCC Rcd 21027 (1998) (*ULS R&O*); *see also id.* at Appendix F (consolidating certain service-specific rules into 47 CFR § 1.903).

⁵² We also note that Cellular licensees today typically have two-way roaming agreements in place with other Cellular licensees. *See* 47 CFR § 20.12.

⁵³ *See* Final Rules (Appendix A).

⁵⁴ 47 CFR § 22.3.

⁵⁵ *See ULS R&O, supra* note 51; 47 CFR § 1.903.

⁵⁶ *See* Final Rules (Appendix A).

rules to that separate proceeding.⁵⁷ It specified that commenters should address “whether the Commission should reorganize Part 27 in order to accommodate these additional Part 22 and Part 24 rules more efficiently.”⁵⁸ In addition, the Commission noted that there are other geographically-licensed, auctioned services that are not included in Part 27, including Public Coast (Part 80), Specialized Mobile Radio (SMR), Location and Monitoring, and 220 MHz (Part 90), and 218-219 MHz (Part 95), and that of these, only SMR is used today by wireless carriers to provide services directly to consumers nationwide. The Commission sought comment on whether it should move the Part 22 Cellular and Part 24 PCS rules to Part 27 in conjunction with moving those other service rule parts to Part 27 as well.⁵⁹

21. CTIA states support in broad terms for migrating the Part 22 Cellular and Part 24 PCS rules to Part 27.⁶⁰ EWA argues that there are important reasons for distinguishing Part 90 SMR systems in the context of a possible rule migration, and “strongly recommends against a wholesale relocation of the [Part 90] SMR service to Part 27”⁶¹ In particular, it urges that the Commission leave under Part 90 the rules governing non-Enhanced SMR (non-ESMR) systems.⁶² No other commenter addressed our queries on these issues.

22. *Discussion.* While CTIA recommends that we evaluate “whether and how to consolidate the rules” and resolve inconsistencies among different service rules (absent unique circumstances for

⁵⁷ *Second Further Notice*, 32 FCC Rcd at 2574-75 (noting that it was seeking to revisit the issues and refresh the record, as the Commission had sought comment on these same issues when this Cellular Reform proceeding was launched in 2012). In connection with the 2012 proposal to issue geographic-area (CMA-based) “overlay licenses” through competitive bidding in two stages, the Commission had queried whether, in the event that it were to adopt a geographic-based regime that would include overlay licenses, the new Cellular rules should be incorporated into Part 27. See *NPRM*, 27 FCC Rcd at 1771 (also suggesting that, if the Cellular rules were moved into Part 27, then the rules for PCS should also be moved into Part 27). The only commenter that responded, the Rural Wireless Association, opposed a relocation of any Part 22 and Part 24 rules to Part 27. See *R&O*, 29 FCC Rcd at 14125 (citing RWA’s Comments filed May 15, 2012). In the *R&O*, the Commission’s transition of the Cellular Service to a geographic-based regime did not entail an auction of overlay licenses, which commenters by and large opposed; instead, based in part on a new proposal by an industry coalition, the Commission adopted a transition approach for the Cellular Service that preserves direct site-based access to Unserved Area while dramatically reducing licensees’ regulatory burdens, and in that context, the Commission decided not to pursue a relocation of Part 22 Cellular and Part 24 PCS rules. See *Second R&O*, 32 FCC Rcd at 2575 (citing *R&O*, 29 FCC Rcd at 14125).

⁵⁸ *Second Further Notice*, 32 FCC Rcd at 2575.

⁵⁹ *Second Further Notice*, 32 FCC Rcd at 2575.

⁶⁰ CTIA Comments at 5 (contending that this would significantly reduce the number of pages comprising the rules in Parts 22, 24, and 27, and assist with training and compliance). It adds that, while a benefit of considering consolidation would be to determine whether inconsistencies are warranted by unique circumstances of a particular service, retention of certain service-specific technical requirements would be warranted “because of the particular spectrum bands involved,” and it notes as examples the Cellular radiated power rule and the rule for determining the Cellular licensee’s CGSA. *Id.* at 5-6.

⁶¹ For example, it contends, the “intermingling of channels among [Part 90] site-based licensees and the substantial commonality of operational characteristics among site-based Part 90 systems, both private internal and commercial SMR, argue strongly in favor of regulating these systems under the well-established Part 90 rules.” EWA Comments at 4 (adding its contention that the purpose of the Part 27 rules is “not intended for nor particularly aligned with site-specific based private internal and commercial SMR operations.”).

⁶² EWA Comments at 2 (noting that Sprint Corporation (Sprint) and Southern Communications Services, d/b/a Southern Linc (Southern) operate ESMR systems and are members of EWA). While EWA states that it would support the decision of ESMR entities if they prefer to have their rules migrated, neither Sprint nor Southern filed comments in response to the *Second Further Notice*.

particular services), it offers only one example of rules that could be consolidated for multiple services.⁶³ EWA focuses solely on the difficulties associated with relocation of Part 90 SMR rules and does not address any other rules in this context. As EWA's comments highlight, disparate types of operations found in certain rule parts would make it challenging to consolidate Part 22 Cellular, Part 24 PCS, and other wireless mobile service rules into a single set of regulations. Such an exercise would entail painstaking review of numerous rules to determine those that can be consolidated and those that must be retained for individual services. In the absence of strong support on the record for this endeavor, which would require a significant investment of staff resources to complete, we decline to pursue the issue at this time.

V. OTHER REGULATIONS RAISED BY COMMENTERS

23. In response to the Commission's query in the *Second Further Notice* as to whether any other Part 22 rules are ripe for removal in light of changed technology, electronic licensing/recordkeeping, or other modernizations that have occurred over the past two decades, commenters request deletion of two Cellular Service rules—Sections 22.921 and 22.925.⁶⁴ In addition, one commenter requests deletion of paragraph (a) of Section 22.143,⁶⁵ which applies to all Part 22 licensees. We discuss the commenters' specific proposals below.⁶⁶

24. *Section 22.921—911 Call Processing Procedures.* AT&T argues that Section 22.921 of our rules, pursuant to which certain Cellular Service mobile telephones that are capable of operating in the analog mode “must incorporate a special procedure for processing 911 calls,”⁶⁷ is now obsolete because, among other reasons, it is “unaware of any carrier that still offers analog devices or operates an analog Cellular system.”⁶⁸ We disagree. Commission data show that, contrary to AT&T's understanding, some carriers are still using analog technology in the Cellular Service band⁶⁹—and Section 22.921 ensures that 911 calls get through in those circumstances.⁷⁰ Under these circumstances, the deletion of this rule would not serve the public interest, and, accordingly, we decline to take such action in this proceeding.

25. *Section 22.925—Prohibition on Airborne Operation of Cellular Telephones.* AT&T and Qualcomm Incorporated (Qualcomm) argue that Section 22.925, which prohibits the operation of Cellular Service telephones aboard “airplanes, balloons or any other type of aircraft . . . while such aircraft are

⁶³ CTIA Comments at 5 (suggesting that a single rule should be adopted for all CMRS licensees that establishes the same license term absent unique circumstances).

⁶⁴ 47 CFR §§ 22.921, 22.925.

⁶⁵ 47 CFR § 22.143(a).

⁶⁶ *Second Further Notice*, 32 FCC Rcd at 2573.

⁶⁷ 47 CFR § 22.921 (specifying “analog mode described in the standard document ANSI TIA/EIA-553-A-1999 Mobile Station—Base Station Compatibility Standard (approved October 14, 1999 . . .)” and indicating where it is available for purchase). Specifically, the rule states that the incorporated procedure “must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers.” *Id.* In addition, at least one of the 911 call system selection processes endorsed or approved by the Commission must be incorporated into the special procedure under this rule. *Id.*

⁶⁸ AT&T Comments at 4.

⁶⁹ See Mobile Deployment Form 477 Data, <https://www.fcc.gov/mobile-deployment-form-477-data>.

⁷⁰ Although AT&T is correct in noting (*see id.*) that wireless 911 provisions reside in 47 CFR § 20.18, there is no provision in that rule addressing the specific requirements that apply to Cellular analog systems under 47 CFR § 22.921.

airborne . . . ,”⁷¹ should be eliminated, or at least modified.⁷² The Commission has an open proceeding in WT Docket No. 13-301 that addresses the use of mobile services aboard aircraft.⁷³ The issues that AT&T and Qualcomm raise regarding the use of Cellular Service spectrum for communications to, from, and onboard aircraft are being dealt with in that proceeding, and we therefore decline to consider the issues here.⁷⁴

26. *Section 22.143(a)—Commencement of Construction Prior to Grant of Application.* Section 22.143 permits applicants to begin construction of PMS facilities prior to grant of their applications; paragraph (a) specifies that such construction may begin “35 days after the date of the Public Notice listing the application for that facility as acceptable for filing.”⁷⁵ EWA argues that Section 22.143(a) should be deleted, asserting that comparable provisions do not exist for other wireless services, and that other portions of the rule put applicants on notice that they assume the risk of constructing prior to grant.⁷⁶ We disagree. The same Public-Notice-plus-35-day period is specified in Section 90.169 of our rules for several other commercial wireless radio services.⁷⁷ Pre-grant construction under Section 22.143 is subject to several conditions, including, among others, that no petitions to deny or mutually exclusive (competing) applications have been filed.⁷⁸ When the Commission reduced the waiting period from the original 60-day and 90-day post-public notice periods to the existing “Public-Notice-plus-35-days” provision, it agreed that applicants should know within that timeframe whether any petition to deny or competing application had been filed, and retained these conditions to disallow construction “when we can not be reasonably certain that we will be able to grant the application.”⁷⁹ The Commission has also recognized that, “[b]ecause construction of [PMS] facilities entails not only the financial risk to the applicant . . . but also environmental and other consequences affecting the public, . . . it would not be in the public interest to allow construction . . . until it is reasonably certain that the facilities can be authorized.”⁸⁰ In a similar vein, it is in the public interest to minimize the Commission’s risk of having to

⁷¹ 47 CFR § 22.925. This rule also requires a notice to be posted on or near each Cellular telephone installed in any aircraft, stating that use of Cellular telephones while the aircraft is on the ground is subject to Federal Aviation Administration regulations. *See id.*

⁷² AT&T Comments at 4-5; Qualcomm Reply Comments at 2-3 (June 13, 2017). *See also* Letter from Colleen Thompson, Area Manager, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary FCC (filed Nov. 15, 2017) (AT&T *Ex Parte* Letter) (reporting on a meeting on Nov. 13, 2017, with Commission staff from several bureaus to discuss Section 22.925).

⁷³ *See Expanding Access to Mobile Wireless Service Onboard Aircraft*, WT Docket No. 13-301, *Notice of Proposed Rulemaking*, 29 FCC Rcd 17132 (2013) (Airborne Wireless proceeding).

⁷⁴ AT&T filed reply comments in the Airborne Wireless proceeding (i.e., WT Docket No. 13-301); it also filed in that docket a copy of the AT&T *Ex Parte* Letter filed in the instant Cellular Reform docket.

⁷⁵ 47 CFR § 22.143 (specifying also, however, that applicants must not *operate* such facilities until the Commission grants the application).

⁷⁶ EWA *Ex Parte* Letter at 4.

⁷⁷ 47 CFR § 90.169(a).

⁷⁸ 47 CFR § 22.143(d)(1), (2).

⁷⁹ *Revision of Part 22 of the Commission’s Rules Governing the Public Mobile Services, et al.*, CC Docket Nos. 95-115, 94-46, and 93-116, RM No. 8367, Report and Order, 9 FCC Rcd 6513, 6552-63 (1994) (*Part 22 Rewrite Order*), 9 FCC Rcd 6513, 6552-63 (adding that, if a petition to deny is filed, “it brings into question whether the application can be granted”; also noting that the previous waiting period was 60 days after the date of the public notice announcing tentative selectees for the Cellular Service, and 90 days after release of the applicable acceptable for filing public notice for the Paging and Radiotelephone Service).

⁸⁰ *Part 22 Rewrite Order*, 9 FCC Rcd at 6553. Note that, for applicants for licenses awarded by competitive bidding, which includes commercial wireless services such as PCS and AWS, the Commission has also established a waiting period, tailored to our competitive bidding process: pre-grant construction is permitted only upon release of

(continued....)

expend taxpayer resources to issue notification to the applicant, pursuant to Section 22.143(b), to stop construction.⁸¹ For all these reasons, we decline to delete Section 22.143(a) at this time.

VI. PROCEDURAL MATTERS

27. *Paperwork Reduction Act Analysis.* The Third Report and Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁸² It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in the rules adopted in this proceeding.⁸³ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁸⁴ the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have assessed the effects of the rule changes we are adopting on small business concerns and find that businesses with fewer than 25 people will benefit from the additional reforms, i.e., deletion of Sections 22.3, 22.301, 22.303, 22.321(c), 22.325, and 22.927, which will provide added flexibility for Cellular licensees no matter their size.

28. *Congressional Review Act.* The Commission will send a copy of today's Third Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁸⁵

29. *Final Regulatory Flexibility Analysis.* 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 that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁸⁶ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact on small entities of the rule changes contained in the Third Report and Order. The FRFA is attached as Appendix B. The Commission will send a copy of this Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

30. *Contact Information.* For further information regarding this Third Report and Order, contact Nina Shafran at (202) 418-2781, or Nina.Shafran@fcc.gov.

VII. ORDERING CLAUSES

31. 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 THIRD REPORT AND ORDER in WT Docket No. 12-40 IS ADOPTED.

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

33. IT IS FURTHER ORDERED that Part 22 of the Commission's rules, 47 CFR Part 22, IS

the Public Notice listing the post-auction long-form application for that facility as acceptable for filing (by which time, mutual exclusivity has been eliminated and the Commission is reasonably certain that the application can be granted). See 47 CFR § 1.2113.

⁸¹ 47 CFR § 22.143(b).

⁸² Pub. L. No. 104-13.

⁸³ The Commission will publish a notice in the *Federal Register* inviting the public to comment on the new and modified requirements, as required by the PRA. See 44 U.S.C. §§ 3501-3520.

⁸⁴ Public Law 107-198, see 44 U.S.C. § 3506(c)(4).

⁸⁵ See 5 U.S.C. § 801(a)(1)(A).

⁸⁶ 5 U.S.C. §§ 601 *et seq.*

AMENDED as specified in Appendix A, effective 30 days after publication in the *Federal Register* except as otherwise provided herein.

34. IT IS FURTHER ORDERED that the amendment adopted in this THIRD REPORT AND ORDER, and specified in Appendix A, to 47 CFR § 22.303, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after OMB review and approval, on the effective date specified in a notice that the Commission will publish in the *Federal Register* announcing such approval and effective date.

35. IT IS FURTHER ORDERED that this Cellular Reform proceeding in WT Docket No. 12-40, including RM Nos. 11510 and 11660, IS HEREBY TERMINATED.

36. 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 THIRD REPORT AND ORDER to Congress and to the Government Accountability Office.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.3 is removed and reserved.

§ 22.3 [Reserved]

3. Section 22.301 is removed and reserved.

§ 22.301 [Reserved]

4. Section 22.303 is removed and reserved.

§ 22.303 [Reserved]

5. Section 22.321 is removed and reserved.

§ 22.321 [Reserved]

6. Section 22.325 is removed and reserved.

§ 22.325 [Reserved]

7. Section 22.927 is removed and reserved.

§ 22.927 [Reserved]

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, released in March 2017.² The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for and Objectives of the Rules

2. In the *Third Report and Order*, the Commission takes additional steps to reduce unnecessary regulatory burdens, not only for licensees in the 800 MHz Cellular Radiotelephone (Cellular) Service, but for other Part 22 licensees as well. The revisions will provide Cellular and other Part 22 licensees with more consistency in licensing across commercial wireless services as well as enhanced flexibility, thereby freeing up more resources for investment in new technologies and greater spectrum efficiency to meet increasing consumer demand for advanced wireless services. With this *Third Report and Order*, we conclude an important chapter in the Commission's extensive regulatory reform agenda, and we terminate the proceeding in WT Docket No. 12-40, including RM Nos. 11510 and 11660.

3. Specifically, we delete the following administrative and recordkeeping rules for all Part 22 licensees: Sections 22.301 and 22.303, concerning station inspections and the retention of hard copies of station authorizations and other station records; and Section 22.325, concerning station control points and personnel on duty at those control points.⁴ Removing these provisions will eliminate needless burdens that are inconsistent with the Commission's practices and with the predominant use of electronic records storage and access, and will also eliminate asymmetry across competing commercial mobile radio services (CMRS), as the Commission's rules for newer wireless services such as PCS, certain AWS, and the 700 MHz Service do not include such provisions. These rules were adopted more than two decades ago, establishing obligations for which there is no longer a benefit to outweigh the costs and burdens of compliance imposed on licensees. In addition, we delete Sections 22.3 and 22.927, which set forth service provider obligations concerning their authorizations and subscribers' Cellular mobile stations, as these rules are no longer necessary. We also delete Section 22.321, concerning equal employment opportunity programs, policies, and complaint reports, as duplicative of other regulations.

4. In the absence of strong support on the record, the Commission declines at this time to pursue the issues of possible relocation of the Part 22 Cellular, Part 24 PCS, and other wireless mobile

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications; Amendment of Parts 0, 1, and 22 of the Commission's Rules with Regard to Frequency Coordination for the Cellular Service; Amendment of the Commission's Rules Governing Radiated Power Limits for the Cellular Service; 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; 2016 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 12-40, 10-112, and 16-138, RM Nos. 11510 and 11660, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518 (2017) (herein, "*Second Further Notice*").

³ See 5 U.S.C. § 604.

⁴ 47 CFR §§ 22.301, 22.303, 22.325.

service rules into a single set of regulations, and possible reorganization of the Part 27 rules. The Commission also declines to delete, as requested by certain commenters, two Cellular Service rules—Sections 22.921 and 22.925—and Section 22.143(a), which applies to all Part 22 licensees. The Commission finds that Sections 22.921 and 22.143(a) continue to serve the public interest, and the restrictions in Section 22.925 are being addressed in a separate proceeding.

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

5. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁵

7. 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

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

9. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is

⁵ 5 U.S.C. § 604(a)(3).

⁶ See 5 U.S.C. § 604(a)(3).

⁷ 5 U.S.C. § 601(6).

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

⁹ 15 U.S.C. § 632(a).

¹⁰ See 5 U.S.C. § 601(3)-(6).

an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 28.8 million businesses.¹²

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁴

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2012 Census of Governments¹⁶ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number there were 37,132 general purpose governments (county,¹⁸ municipal and town or township¹⁹) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts²⁰ and special

¹¹ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹² See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹³ 5 U.S.C. § 601(4).

¹⁴ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>

¹⁷ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁸ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

(continued....)

districts²¹) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.²² Based on this data, we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²³

12. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁵ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁶ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.²⁷ Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

13. The Commission’s own data—available in its Universal Licensing System (ULS)—indicate that, as of May 17, 2018, there are 264 Cellular Service licensees that will be affected by our actions today.²⁸ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Also, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including the Cellular Service, PCS, and Specialized Mobile Radio (SMR) services.²⁹ Of this

²¹ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

²² See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments, the majority of the 38, 266 special district governments have populations of less than 50,000.

²³ *Id.*

²⁴ U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Carriers (Except Satellite),” See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

²⁵ 13 CFR § 121.201, NAICS code 517210.

²⁶ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

²⁷ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²⁸ See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

²⁹ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

total, an estimated 261 have 1,500 or fewer employees.³⁰ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

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

14. The *Third Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities, nor on any other entities. Rather, it eliminates several existing reporting and recordkeeping requirements, which will benefit small entities as well as all other entities that operate Cellular Service facilities. The deleted rules include Sections 22.301 and 22.303, which collectively require that hard copies of license authorizations and other records be maintained by all Part 22 licensees for each station, and that such records and the station itself be made available for inspection upon request.³¹ Small entities as well as other Part 22 entities will no longer be burdened by these requirements. Licensees will continue to have access to their official authorizations in the ULS, which is available electronically at all times. Similarly, members of the public will continue to have access to reference copies in the ULS, which reflects the most up-to-date information concerning all authorizations.

15. The *Third Report and Order* also deletes Section 22.325, which requires that “[e]ach station in the Public Mobile Services [] have at least one control point and a person on duty who is responsible for station operation.”³² The requirement has become technologically obsolete, as commercial wireless licensees routinely monitor their network operations by automatic and remote mechanisms. Part 22 licensees, including small entities, will no longer be burdened by it, thus freeing up their resources and providing them with the same flexibility as other CMRS licensees to determine how to manage their networks to comply with the Commission’s operational rules.

16. All CMRS licensees will continue to be subject to the current annual equal employment opportunity (EEO) complaints report filing requirement. The requirement is set forth in Section 22.321(c), which applies to Part 22 licensees regardless of size, and is also set forth in the later-adopted Section 90.168(c), which applies more broadly to *all* CMRS licensees regardless of size.³³ Section 90.168 contains the same provisions as Section 22.321, including Section 22.321(c), and thus it subsumes Section 22.321 in its entirety. On this basis, the Commission deletes Section 22.321 in its entirety as duplicative.

17. The *Third Report and Order* deletes two other rules: Section 22.3, which applies to all Part 22 licensees, and Section 22.927, which applies only to Cellular Service licensees. Both rules set forth certain licensee obligations concerning operations pursuant to a valid FCC authorization, and service to subscribers of a different commercial wireless system (i.e., “roamers”). A later-adopted rule, Section 1.903, which applies to numerous wireless services, including all Part 22 licensees, imposes essentially the same obligations as Sections 22.3 and 22.927, thus rendering these Part 22 rules duplicative. By deleting Sections 22.321, 22.3, and 22.927, the Commission removes licensees’ compliance obligations under one group of regulations where the same obligations exist under different provisions, and thereby simplifies compliance by eliminating regulations that are largely duplicative.

18. Small entities and other licensees will also continue to be subject to Section 22.921, requiring certain Cellular Service mobile telephones that are capable of operating in the analog mode to

³⁰ *Id.*

³¹ Deletion of these rules does not affect the Commission’s statutory station inspection authority. *See* 47 U.S.C. § 303(n).

³² 47 CFR § 22.325.

³³ 47 CFR § 22.321(c).

“incorporate a special procedure for processing 911 calls,”³⁴ and Section 22.143(a), which allows applicants to begin construction of Public Mobile Services facilities “35 days after the date of the Public Notice listing the application for that facility as acceptable for filing.”³⁵ Commenters have not demonstrated that these rules are burdensome or no longer needed. Moreover, the Commission finds that these regulations continue to serve the public interest.

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

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”³⁶

20. The rules eliminated in the *Third Report and Order* are expected to have a beneficial economic impact on small entities because all Cellular Service and other Part 22 licensees will be subject to fewer recordkeeping, reporting, and compliance burdens. While the record does not enable a precise quantification of costs and benefits, we know that these requirements impose burdens that require expenditures of personnel and other resources. Specifically, removal of the requirements under Sections 22.301 and 22.303 to print (or request that the Commission print and mail) hard copies of FCC authorizations and retain them as part of each station’s records every time the Commission grants an application will allow small entities and other Part 22 licensees to rely on the electronic availability of such authorizations in ULS, thereby realizing long-term cost savings. Similarly, elimination of the requirement under Section 22.325 to maintain control points for each station and to have a person on duty in charge of station operations is expected to decrease the costs of maintaining facilities and to allow small entities as well as licensees of all sizes to realize the cost savings inherent in remote monitoring and automatic functions for station operations. Likewise, the deletion of Sections 22.3, 22.321, and 22.927 will simplify compliance burdens by removing duplicative regulations. In addition, all of the rule deletions adopted in the *Third Report and Order* put Cellular Service and other Part 22 licensees more on regulatory par with licensees in competing CRMS such as PCS, AWS, and the 700 MHz Service.

21. A few commenters suggested that the Commission could eliminate the annual EEO complaints report requirement for licensees with fewer than 16 full-time employees. However, the commenters failed to take note of the fact that same requirement is also in another rule part that applies to *all* CMRS licensees—a rule that is outside the scope of this proceeding. Thus, the Commission declined to eliminate this requirement. In any event, the commenters that focused on Section 22.321(c) failed to demonstrate adequately why licensees with fewer than 16 employees should be exempt from the requirement.

22. The Commission also declined to delete three rules—Sections 22.925, 22.921, and 22.143(a)—raised by commenters. Section 22.925 prohibits the operation of Cellular Service mobiles aboard “airplanes, balloons or any other type of aircraft . . . while such aircraft are airborne . . .”³⁷ The issues raised by commenters regarding this prohibition are being addressed by the Commission in another proceeding, WT Docket No. 13-301, and therefore the Commission declines to consider them here. Regarding Section 22.921, contrary to commenters’ understanding, Commission data show that analog

³⁴ 47 CFR § 22.921.

³⁵ 47 CFR § 22.143(a).

³⁶ 5 U.S.C. § 603(c)(1) - (4).

³⁷ 47 CFR § 22.925.

technology is still being used in the Cellular Service band.³⁸ The specific requirements in Section 22.921 thus continue to ensure that 911 calls get through even when analog technology is used by Cellular carriers. The other rule that was considered but not deleted is Section 22.143(a), which permits applicants to begin construction of PMS facilities prior to grant of their applications.³⁹ The Commission finds that this rule also continues to serve the public interest. The 35-day waiting period for commencing pre-grant construction, which a commenter raised for deletion, allows time for the Commission to be reasonably certain that it will be able to grant the application for the facility at issue (including determining that no petitions to deny or competing applications have been timely filed).

Report to Congress

The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁴⁰ In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) also will be published in the *Federal Register*.⁴¹

³⁸ See Mobile Deployment Form 77 Data, <https://www.fcc.gov/mobile-deployment-form-477-data>.

³⁹ 47 CFR § 22.143 (specifying also, however, that applicants must not *operate* such facilities until the Commission grants the application).

⁴⁰ 5 U.S.C. § 801(a)(1)(A).

⁴¹ 5 U.S.C. § 604(b).

APENDIX C

List of Commenters

Comments

AT&T Services, Inc. (AT&T)
CTIA
Critical Messaging Association
Enterprise Wireless Alliance (EWA)
Verizon

Reply Comments

Qualcomm Incorporated

Ex Parte Letters

AT&T
EWA
Gogo Inc.