

FCC FACT SHEET*

Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program

Notice of Proposed Rulemaking – ET Docket No. 24-136

Background: The NPRM focuses on Telecommunications Certification Bodies (TCBs) and Measurement Facilities (test labs), to which the Commission has through the years delegated authority to carry out important responsibilities as part of our equipment authorization program. The item proposes new rules and seeks comment on other considerations to help ensure the integrity of these entities and advance the Commission’s comprehensive strategy to build a more secure and resilient communications supply chain.

What the Notice of Proposed Rulemaking Would Do:

- Propose to prohibit from participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Commission’s Covered List has direct or indirect ownership or control of 10% or more.
 - Consistent with this proposal, direct the Office of Engineering and Technology to suspend FCC recognition of any TCB or test lab directly or indirectly owned or controlled by entities identified on the Covered List.
- Seek comment on the extent to which the Commission should impose eligibility restrictions for TCBs and test labs based on lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security risks.
- Propose, as part of the Commission’s effort to strengthen oversight of the equipment authorization program, to adopt new information collections to require that TCBs and test labs report any entity that holds a 5% or greater direct or indirect equity and/or voting interest in them.
- Seek comment on other revisions to promote the integrity of TCBs and test labs.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in ET Docket No. ET Doc. No. 24-136, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants 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 *et seq.*

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

In the Matter of)
Promoting the Integrity and Security of) ET Docket No. 24-136
Telecommunications Certification Bodies,)
Measurement Facilities, and the Equipment)
Authorization Program)

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: [60] days after Federal Register Publication
Reply Comment Date: [90] days after Federal Register Publication

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its February 15, 2024 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman 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 FCC’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.

APPENDIX A
APPENDIX B**I. INTRODUCTION**

1. From 5G networks and Wi-Fi routers to baby monitors and fitness trackers, a wide array of radio-frequency (RF) devices are ubiquitous in Americans' daily lives and across our economy. The FCC's equipment authorization program is tasked with ensuring that all of these devices available to American businesses and consumers comply with our rules regarding, among other things, interference, radio-frequency (RF) emissions, and hearing aid compatibility. To ensure the efficient and effective review of tens of thousands of equipment authorizations annually, the Commission delegates certain important responsibilities to telecommunications certification bodies (TCBs) and measurement facilities (test labs) with regard to implementing our equipment authorization program. Now, as part of ongoing efforts to promote national security and protect our nation's communications equipment supply chain, the Commission has placed significant new national security related responsibilities on TCBs and test labs. By establishing new equipment authorization program rules that prohibit authorization of communications equipment that has been determined to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons,¹ these entities now must help ensure that such prohibited equipment is kept out of our nation's supply chain. Further, these entities are entrusted with receiving and maintaining sensitive and proprietary information regarding communications equipment. In light of these new and ongoing responsibilities and the persistent and evolving threats posed by untrustworthy actors seeking, among other things, to compromise our networks and supply chains, today we seek to strengthen our requirements for and oversight of TCBs and test labs by proposing new rules that would help ensure the integrity of these entities for purposes of our equipment authorization program, better protect national security, and advance the Commission's comprehensive strategy to build a more secure and resilient communications supply chain. It is vital that we ensure that these entities are not subject to influence or control by foreign adversaries or other untrustworthy actors that pose a risk to national security.

2. Specifically, we propose to prohibit from recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List has direct or indirect ownership or control, and prohibit reliance on or use of, for purposes of equipment authorization, any TCB or test lab that is directly or indirectly owned or controlled by any entity on the Covered List or by any third party in which an entity identified on the Covered List has any direct or indirect ownership or control. Considering our national security concerns about entities identified on the Covered List, we also direct the Office of Engineering and Technology (OET) to take swift action to suspend the recognition of any TCB or test lab directly or indirectly owned or controlled by entities identified on the Covered List, thereby preventing such entities from using their owned or controlled labs to undermine our current prohibition on Covered Equipment.² Next, we seek comment on prohibiting

¹ *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 and EA Docket No. 21-233, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13493 (2022) (*EA Security R&O* and *EA Security FNPRM*, respectively).

² We note that OET has recently taken action to deny the renewal of a lab – Global Compliance and Testing Center of Huawei Technologies – apparently owned by an entity identified on the Covered List, by issuing a letter asking that they show cause as to why they should be allowed to obtain FCC re-recognition. *See* Letter to Global Compliance and Testing Center of Huawei Technologies, https://www.fcc.gov/sites/default/files/Global_Compliance-signed.pdf (sent April 22, 2024). We fully expect that OET will, in this interim period of this suspension, pending final rules requiring more transparency from TCBs, test labs, and entities on the Covered List, work diligently with our federal partners to take action against such entities for which there is evidence to support a reasonable conclusion that such entity is owned or controlled by an entity identified on the Covered List, while still allowing such entities an opportunity to show cause and seek review.

recognition of any TCB or test lab directly or indirectly owned or controlled by a foreign adversary or any other entity that has been found to pose a risk to national security. To that end, and consistent with Commission action in other recent national security proceedings,³ we seek comment on whether and how the Commission should consider national security determinations made in other Executive Branch agency lists in establishing eligibility qualifications for FCC recognition of a TCB or a test lab in our equipment authorization program.⁴ In addition, we propose that the prohibition would be triggered by direct or indirect ownership or control of 10% or more and to enable us to enforce this requirement TCBs and test labs would be required to report any entity that holds a 5% or greater direct or indirect equity and/or voting interest. Further, to implement the proposed national security prohibition, to ensure the integrity of the equipment authorization program and the impartiality of the TCBs and test labs within it, we propose to collect additional ownership and control information from TCBs and test labs. We also seek comment on other revisions concerning TCBs and test labs as we seek to address these issues.

II. BACKGROUND

3. The Commission's equipment authorization program, codified in the Commission's part 2 rules, rules play a critical role in enabling the Commission to carry out its responsibilities under the Communications Act. Under Section 302 of the Communications Act, the Commission is authorized to make reasonable regulations governing the interference potential of equipment that emit radiofrequency (RF) energy and that can cause harmful interference to radio communications,⁵ which are implemented through the equipment authorization program. In addition, the equipment authorization program helps ensure that communications equipment comply with certain other policy objectives – which include protecting the communications networks and supply chain from equipment that poses an unacceptable risk to national security.⁶

4. Communications equipment must comply with the requirements under part 2 before they

³ See *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Amendment of the Schedule for Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119 and MD Docket No. 23-134, 38 FCC Rcd 4346 (2023) (*Evolving Risks Order and NPRM*); *In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, (FCC 24-26), __ FCC Rcd __ (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*).

⁴ Throughout this item, we use the term “eligibility” generally to mean FCC recognition or reliance upon the results produced by the relevant entity.

⁵ 47 U.S.C. § 302a. Section 302(b) states that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”

⁶ See *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 and EA Docket No. 21-233, Notice of Proposed Rulemaking, and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 10578, 10589-90, para. 23 (in addition to minimizing harmful interference of devices, the equipment authorization program ensures that devices comply with other policy objectives, such as human RF exposure limits and hearing aid compatibility of mobile handsets, and the Anti-Drug Abuse Act of 1988); *EA Security R&O*, 37 FCC Rcd 13493 (adopting rules prohibiting authorization of equipment that poses an unacceptable risk to national security).

can be marketed in or imported to the United States.⁷ Under section 302(e),⁸ the Commission has delegated certain important responsibilities to TCBs and test labs with regard to implementing our equipment authorization program.

A. Telecommunications Certification Bodies and Test Labs

5. *Telecommunications Certification Bodies (TCBs)*. The Commission's rules specify the qualification criteria for TCBs and assign TCBs responsibility for issuing equipment certifications, under Commission direction and oversight.⁹ In authorizing the use of TCBs, the Commission sought to speed the process for bringing new technologies to market while also adopting an oversight framework to ensure that the TCBs act impartially and consistent with their responsibilities.¹⁰ The creation and use of TCBs in the equipment authorization process allowed the Commission to implement Mutual Recognition Agreements (MRAs) with the European Union, the Asia-Pacific Economic Cooperation, and other foreign trade partners.¹¹

⁷ See 47 CFR part 2 subpart I, §§ 2.801 *et seq.* (Marketing of Radio Frequency Devices); part 2 subpart J, §§ 2.901 *et seq.* (Equipment Authorization Procedures); part 2 subpart K, §§ 2.1201 *et seq.* (Importation of Devices Capable of Causing Harmful Interference). Under Section 302 of the Act, the Commission is authorized to make reasonable regulations governing the interference potential of devices that emit radiofrequency (RF) energy and that can cause harmful interference to radio communications. 47 U.S.C. § 302a. Section 302(b) states that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” The purpose of the equipment authorization rules is to promote efficient use of the radio spectrum, to ensure that the RF communications equipment comply with all applicable Commission rules (including both technical and applicable policy requirements), and to carry out various responsibilities associated with certain treaties and international regulations. 47 CFR § 2.901. The Office of Engineering and Technology (OET) administers day-to-day operation of the equipment authorization program. See 47 CFR § 0.241(b). OET's Laboratory Division maintains a webpage devoted to the equipment authorization program. See the FCC's, Equipment Authorization Approval Guide, <https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization>.

⁸ 47 U.S.C. section 302a(e).

⁹ *Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Report and Order, 29 FCC Rcd 16335 (2014) (*2014 EA R&O*); see *id.* at 16340-41, paras. 9-10 (requiring that TCBs be solely responsible for grant of certification applications and noting the Commission's “continued the successful migration of additional responsibilities to TCBs while maintaining [FCC] control over critical elements of the process”). In this decision, the Commission revised several rules applicable to TCBs, including §§ 2.960, 2.962, and 2.964. See generally *2014 EA R&O*. See also *1998 Biennial Regulatory Review – Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, GEN Docket No. 98-68, Report and Order, 13 FCC Rcd 24687 (1998) (*1998 TCB Order*).

¹⁰ See generally *2014 EA R&O*, 29 FCC Rcd 16335.

¹¹ See *1998 TCB Order*, 13 FCC Rcd 24687, ___, para. 10 (1998). MRAs are government-to-government trade facilitating measures aimed at a global approach to conformity assessment, providing a framework for all member economies (countries) to follow. In each of these agreements, participating countries agree to accept test results and/or product approvals (e.g., certifications) performed by the conformity assessment bodies of the other country. See, e.g., <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>; KDB publication 901874, <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=203873>. In the United States, MRAs as a general matter are negotiated through the U.S. Trade Representative. The Commission participates in eight MRAs concerning TCBs – Asia-Pacific Economic Cooperation (APEC) Telecom MRA; Intra-American Telecommunications Committee of the Organization of American States MRA; European Union MRA; European Free Trade Association (EFTA) MRA; Japan MRA; Israel MRA; Mexico MRA; and United Kingdom MRA. See KDB 901874, “Mutual Recognition Agreements,” found at <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>. See Asia-Pacific Economic Cooperation (APEC) Mutual Recognition

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6. TCBs are responsible for reviewing and evaluating applications for equipment certification for compliance with the Commission’s applicable requirements (including technical compliance testing and other requirements) and determining whether to grant or to dismiss the application based on whether it is in accord with Commission requirements.¹² TCBs must meet all the appropriate specifications in the ISO/IEC 17065 standard,¹³ which include requirements to ensure that TCBs carry out their responsibilities in a “competent, consistent, and impartial manner.”¹⁴ Commission rules also impose certain obligations on each TCB to perform post-market surveillance, based on “type testing a certain number of samples of the total number of product types” that the TCB has certified.¹⁵

7. To carry out their prescribed equipment certification responsibilities, under current rules TCBs must be accredited based on determinations made by a Commission-recognized accreditation body¹⁶ and recognized by the Commission before they are authorized to evaluate applications for equipment authorization.¹⁷ Under Commission rules, TCBs must be located in the United States or in countries that have entered into applicable Mutual Recognition Agreements (MRAs) with the United States.¹⁸

8. For TCBs located outside of the United States, designation is authorized in accordance

Arrangement for Conformity Assessment of Telecommunications Equipment, May 8, 1998 (*APEC MRA*); Agreement on Mutual Recognition Between the United States of America and the European Community, May 18, 1998, KAV 5464 (*EU MRA*); Agreement on Mutual Recognition Between the United States of America and the EEA EFTA States, Oct. 17, 2005 (*EFTA MRA*); The Inter-American Telecommunication Commission Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment, Oct. 29, 1999 (*CITEL MRA*); Agreement on Mutual Recognition of Results of Conformity Assessment Procedures, with Annex, U.S.-Jap., Feb. 16, 2007 (*Japan MRA*); Mutual Recognition Agreement Between The Government of The United States of America And the Government of the State of Israel for Conformity Assessment of Telecommunications Equipment, U.S.-Isr., Oct. 15, 2012 (*Israel MRA*); Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment, with Appendices and Annexes, U.S.-Mex., May 26, 2011, TIAS 11-610 (*Mexico MRA*); Agreement on Mutual Recognition, U.S.-U.K., Feb. 14, 2019 (*U.K. MRA*). Pursuant to five of these MRAs (APEC, EU, EFTA, Japan, and UK), TCBs have been recognized.

¹² See generally 47 CFR §§ 2.915, 2.960(a) (the TCB shall review the application to determine compliance with the Commission’s requirements), 2.962(f) (“Scope of responsibility”). The TCB program – including the TCBs’ roles and responsibilities – are discussed in KDB 641163 (2023). See [Telecommunication Certification Body – Roles and Responsibilities – KDB Publication 641163](#). If the Commission publishes a “Pre-approval Guidance List” identifying categories of equipment or types of testing for which a TCB must request guidance, then the TCB must request such guidance before approving equipment on the list. 47 CFR § 2.964(a).

¹³ See, e.g., 47 CFR § 2.962(c)(1).

¹⁴ ISO/IEC 17065 at v (“Introduction”). See also *id.*, sections 4.2.2, 5.1.1, and 5.2; Annex A (“Impartiality”).

¹⁵ 47 CFR § 2.962(g)(1). TCBs may request samples of equipment directly from the grantee. *Id.*, § 2.962(g)(4).

¹⁶ 47 CFR § 2.962(c) (requiring that TCBs meet all the requisite requirements of ISO/IEC 17065). Section 2.962(c)(6) requires that the FCC “provide[] public notice of specific methods that will be used to accredit TCBs, consistent with these qualification criteria.” 47 CFR § 2.962(c)(6). KDB 641163 (“TCB Roles and Responsibilities”) <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=44683> and KDB 668797 (“TCB Program Technical Assessment”), found at <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=59239>.

¹⁷ See 47 CFR § 2.960(a) (the Commission may recognize TCBs that have been accredited and designated in the United States or outside the United States provided that the TCB is designated in accordance with the terms of an effective bilateral or multilateral MRA); 47 CFR § 2.962(e). See also KDB 901874, “Mutual Recognition Agreements,” <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>, at 5-6 (discussing general FCC requirements for recognition of TCBs).

¹⁸ TCBs located in the United States must be accredited by TCB accreditation bodies designated by the National Institute of Standards and Technology (NIST) based on ISO/IEC 17065.

with the terms of an effective bilateral or multilateral MRA to which the United States is a party.¹⁹ Pursuant to each MRA, participating countries agree to accept the equipment authorizations performed by the TCB-equivalent conformity assessment body of the other country.²⁰ There are 15 FCC-recognized Designating Authorities in MRA-partnered countries.²¹ These Designating Authorities are governmental organizations associated with MRA-partnered economies.²² Currently there are 40 FCC-recognized TCBs,²³ the majority of which are located in the United States and the rest are located in nine MRA-partnered countries.²⁴

9. Finally, the Commission will withdraw recognition of a TCB if the TCB's designation or accreditation is withdrawn, the Commission determines that there is "just cause," or the TCB requests that it no longer hold a recognition.²⁵ Our rules also set forth specific procedures, including notification requirements, that the Commission will follow if the Commission intends to withdraw its recognition of a TCB.²⁶

10. *Test labs.* Test labs ensure that subject equipment complies with the Commission's applicable technical rules²⁷ to minimize the risk of harmful interference, promote efficient use of spectrum, and advance other policy goals, such as ensuring hearing aid compatibility and controlling the environmental effects of RF radiation.²⁸ The role and responsibilities of test labs specifically concern the

¹⁹ 47 CFR § 2.960(c). An equipment authorizing body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. *Id.*

²⁰ *See generally id.* The MRAs do not attempt to harmonize the respective regulatory requirements or technical standards. *Id.*

²¹ *See* https://apps.fcc.gov/oetcf/tcb/reports/accreditor_report.cfm.

²² As of March 26, 2024, the FCC recognizes TCB designations by Designating Authorities from outside the United States in the following countries (under different MRAs) – Austria, Canada, the Czech Republic, Germany, Denmark, Spain, France, Hong Kong, Ireland, Italy, Japan, Netherlands, Sweden, Singapore, and United Kingdom. *See* https://apps.fcc.gov/oetcf/tcb/reports/accreditor_report.cfm. Ten of these countries are within the European Community. Hong Kong is a member state in the APEC MRA, which was agreed upon by the APEC Ministers in 1998.

²³ The Commission's website provides a searchable database of all currently recognized TCBs. 47 CFR § 2.962(e)(5). *See* <https://apps.fcc.gov/oetcf/tcb/reports/TCBSearch.cfm>. With respect to our obligations toward those TCBs designated pursuant to an MRA, each and every such agreement preserves the rights of, and provides specific procedures for, the United States to contest the competency of, and withdraw recognition of, an exporting party's TCB. *See EU MRA* arts. 7-9; *APEC MRA* art 8; *CITEL MRA* art. 8; *Israel MRA* art. 9; *Japan MRA* art. 8; *Mexico MRA* art. 8; *EFTA MRA* arts. 8-9; *U.K. MRA* art. 7.

²⁴ Most TCBs are located in the United States (21), and the others (19) are located in nine different countries: Austria (1), Canada (4), Germany (5), Hong Kong (1), Netherlands (1), Singapore (1), Spain (2), Sweden (1), and United Kingdom (3).

²⁵ 47 CFR § 2.962(e) (the Commission will withdraw its recognition of a TCB "if the Commission determines there is just cause for withdrawing the recognition").

²⁶ 47 CFR § 2.962(e)(2)-(4).

²⁷ 47 CFR § 2.911(e) (submission of technical data to the TCB is one of several application requirements set forth in section 2.911).

²⁸ *See, e.g., Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Notice of Proposed Rulemaking, 28 FCC Rcd 1606, 1614, para. 11 (2013). The Commission's hearing aid compatibility rules promote equal access to communications services for individuals with hearing loss, and ensure the availability of wireless handsets that are compatible with hearing aids and cochlear implants. *See, e.g., Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336 (2016). The

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development of technical reports on testing equipment for which authorization is sought for compliance with the Commission's applicable technical requirements.²⁹ Applicants for equipment certification provide the testing data to a TCB to show compliance with the FCC requirements.

11. For all granted applications, the TCBs must send to the FCC any test lab data and other information relied upon by the TCB.³⁰ This information is made publicly available on the FCC website upon grant of the equipment authorization. Under our rules, test labs do not have any role or responsibility for making any certification decision on whether the equipment would be in compliance, nor do they have any role with respect to any other certification determination, including on whether the equipment constitutes "covered" equipment; all certification activities (evaluation, review, and decisional determinations) are reserved for TCBs.³¹

12. Under Commission rules, testing for equipment certification can only be performed by a test lab that has been accredited by an FCC-recognized accreditation body and recognized by the Commission.³² Applicable rules require that test labs be accredited based on ISO/IEC 17025.³³ Our rules requires that entities wishing to become a recognized laboratory accreditation body must submit a written request to the Chief of OET and submit evidence concerning their credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the technical requirements set forth under section 2.948(e).³⁴ Applicants must successfully complete and submit a peer review.³⁵ Under the ISO/IEC 17011 standard, accreditation body applicants must meet specified impartiality, management, and accreditation requirements, and otherwise meet accreditation

Commission's rules establish RF radiation exposure limits for devices as part of the equipment certification process for mobile and portable devices. *See* 47 CFR §§ 1.1307(b), 1.1310, 2.1091, 2.1093. *See also* 47 CFR § 74.795, which specifies the operating requirements that are part of the equipment certification process for digital low power TV and TV translator transmitters, and 47 CFR § 15.117(h), which specifies the operating requirements that are part of the equipment Verification procedure for DTV broadcast receivers.

²⁹ *See* 47 CFR §§ 2.947-2.949 for applicable rules concerning test labs, including their roles and responsibilities, the necessary accreditation (and periodic re-evaluation) of test labs by a Commission-recognized accrediting body, and the Commission recognition of accredited test labs.

³⁰ 47 CFR § 2.962(f)(8). Applicants may, under certain circumstances, apply for confidential treatment of application data. *See* KDB 726920, available at <https://apps.fcc.gov/oetcf/kdb/forms/FTSearchResultPage.cfm?switch=P&id=41731>.

³¹ *See* 47 CFR §§ 2.915, 2.960(a) (the TCB shall review the application to determine compliance with the Commission's requirements), 2.962(f) ("Scope of responsibility").

³² 47 CFR § 2.948(a).

³³ 47 CFR §§ 2.948(a), (e); ISO/IEC 17025:2017(E) ("General requirements for the competence of testing and calibration laboratories") (ISO/IEC 17025); *see* 47 CFR § 2.910(d). *See* 2014 EA R&O, 29 FCC Rcd at 16354-55, para. 45 (requiring that all laboratories the perform certification testing be accredited to ISO/IEC 17025 and revising sections 2.948(a) and (e) accordingly). In this decision, the Commission eliminated the long-standing option for test labs located in countries that do not have an MRA with the United States to be recognized by the FCC by filing a separate request (with submissions) under section 2.948 to obtain an OET approval. The Commission sought to ensure that test labs are accredited to the same applicable standards under ISO/IEC 17025. *Id.* at 16354-55, paras. 45-47.

³⁴ 47 CFR § 2.949(a)-(b). *See* 2014 EA R&O, 29 FCC Rcd at 16356-58, paras. 50-53.

³⁵ 47 CFR § 2.949(b)(1) (applicants shall provide evidence of their credentials and qualifications to perform accreditation of test labs, which includes "[s]uccessful completion of an ISO/IEC 17011 [] peer review"). *See* ISO/IEC 17011 ("Conformity Assessment – General requirements for accreditation bodies accrediting conformity assessment bodies"), ISO/IEC 17011:2004(E) (ISO/IEC 17011). Requirements contained in ISO/IEC 17011 are used to support peer evaluation mechanisms created at regional and international levels. Highly qualified and experienced experts conduct review to provide confidence that accreditation bodies around the world operate to the same standards.

body responsibilities.³⁶ OET publishes its findings and maintains a webpage on FCC-recognized accreditation bodies.³⁷

13. The Commission recognizes four accreditation bodies in the U.S. that can designate test labs that operate in the United States.³⁸ As for accreditation of test labs outside of the United States in countries that have entered into an MRA, section 2.948(f)(1) provides that test lab accreditation will be acceptable if the accredited laboratory has been designated by a foreign designating authority and recognized by the Commission under the terms of an MRA.³⁹ Currently there are 24 such FCC-recognized test lab accreditation bodies outside the United States, located in 23 different MRA-partnered countries.⁴⁰

14. The Commission has a separate rule provision concerning the accreditation bodies that are permitted to accredit test labs in countries that do not have an MRA with the United States. If the test lab is located in a country that does not have an MRA with the United States, then the test lab must be accredited by an organization recognized by the Commission to perform accreditations in non-MRA countries.⁴¹ Currently, the Commission has recognized three such accrediting bodies.⁴² In response to requests from industry for clarifying the process by which test labs are accredited in non-MRA countries, the Commission in 2016 directed OET to provide clearer guidance on accreditation of test labs in non-MRA-partnered countries.⁴³ Current rules do not preclude an accreditation body that is not in an MRA-

³⁶ See generally ISO/IEC 17011.

³⁷ *Id.* at 2-4. See <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm>.

³⁸ American Association for Laboratory Accreditation (A2LA), National Voluntary Laboratory Accreditation Program (NVLAP), ANSI National Accreditation Board (ANAB, and Perry Johnson Laboratory Accreditation Inc (PJLA).

³⁹ 47 CFR § 2.948(f)(1). As noted above, the FCC participates in eight MRA's. A recognized designating authority in any of the participating economies can assess and designate a competent testing lab to the FCC and request FCC recognition. The designation process requires the designating authority submit information establishing the capabilities of the test lab.

⁴⁰ We note that the Test Lab Accrediting Bodies in MRA countries outside of the United States generally are governmental agencies. <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm> In its recognition of these accreditation bodies, the FCC specifies for each accreditation body the countries in which the test labs can be accredited for operation. For instance, IANZ of New Zealand is recognized to only designate test labs in New Zealand but A2LA in the US is recognized to designate test labs in China, India, Philippines, Thailand, and the U.S.

⁴¹ 47 CFR § 2.948(f)(2). Since July 6, 2017, the Commission has recognized four test lab accrediting bodies that potentially may accredit test labs in non-MRA-partnered countries. These are all based in the United States – American Association for Laboratory Accreditation, National Voluntary Laboratory Accreditation Program, ANSI National Accreditation Board, and Perry Johnson Laboratory Accreditation, Inc.).

⁴² These accrediting bodies (all of which also can accredit test labs in the United States) are the American Association for Laboratory Accreditation (which can accredit test labs in China, India, Philippines, Thailand); the National Voluntary Laboratory Accreditation Program (which can accredit test labs in China, India, Indonesia, Philippines, Russian Federation, Switzerland, Thailand, Ukraine); and the ANSI National Accreditation Board (which can accredit test labs in China, India, Indonesia, Philippines, Russian Federation, Switzerland, Thailand, Ukraine, and United States). See <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm>. We note that to date only U.S.-based accreditation bodies have applied for FCC recognition for the authority to accredit test labs in countries that do not fall within any MRA-partnered countries.

⁴³ See KDB 974614 (“Accredited Testing Laboratory Roles and Responsibilities D02”) (last updated March 2, 2018), <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=44684>. Commission rules do not foreclose the possibility that an accreditation body in an MRA economy could be recognized by the Commission to accredit test labs in non-MRA countries. See *Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Memorandum Opinion and Order on Reconsideration, 31 FCC Rcd 7426, 7427-28, 7429-30, paras. 5, 10-12 (directing OET to publish guidance on the

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partnered country from submitting a request to be recognized, but, to date, no accreditation body outside of an MRA-partnered economy has submitted a request for FCC recognition.

15. Under the Commission rules, if a test lab has been accredited for the appropriate scope for the types of equipment that it will test, then it “shall be deemed competent to test and submit test data for equipment subject to certification.”⁴⁴ Test labs must be reassessed at least every two years.⁴⁵ Under current procedures, if the accreditation body re-assesses the test lab and concludes that it continues to meet the requirements set forth under ISO/IEC 17025, the accreditation body will update the expiration date for the test lab’s accreditation in the FCC’s Equipment Authorization Electronic System (EAS) for a period of up to two years.

16. The Commission maintains a list of FCC-recognized accredited test labs on its website, which currently lists nearly 640 test labs.⁴⁶ Currently, MRA-partnered economies have the most FCC-recognized test labs,⁴⁷ while there are also many test labs in countries in economies that have not entered an MRA with the United States.⁴⁸ While the Commission’s rules currently provide procedures for FCC recognition of test lab accreditation bodies,⁴⁹ our rules do not currently include specific Commission rules or procedures for withdrawing recognition of a test lab accreditation body.

B. Recent Commission Actions

17. *The EA Security R&O and FNPRM.* On November 11, 2022, the Commission adopted the *EA Security Report and Order, Order, and Further Notice of Proposed Rulemaking*.⁵⁰ Specifically, the Commission established several new rules to prohibit authorization of communications equipment identified on the Commission’s Covered List (“covered” equipment) developed pursuant to the Secure Networks Act.⁵¹ The Covered List identifies certain types of communications equipment produced by

form and substance that such submissions should take) (*2016 EA MO&O*). In 2014, the Commission required that all test labs be accredited under ISO/IEC 17025. This removed the previous process that had permitted test labs in countries not located in MRA-partnered countries to file separate submissions and obtain approval to test equipment. *See 2014 EA R&O*, 29 FCC Rcd at 16354-55, para. 45 (requiring that all laboratories the perform certification testing be accredited to ISO/IEC 17025 and revising sections 2.948(a) and (e) accordingly). The Commission sought to ensure that all test labs are accredited to the same applicable standards under ISO/IEC 17025. *Id.* at 16354-55, paras. 45-47.

⁴⁴ 47 CFR § 2.948(e).

⁴⁵ *See* 47 CFR § 2.948(e) (requiring that accreditation bodies reassess test labs at least every two years).

⁴⁶ 47 CFR § 2.948(c). <https://apps.fcc.gov/oetcf/eas/reports/TestFirmSearch.cfm>. As of March 25, 2024, there were 639 FCC-recognized test labs.

⁴⁷ As of March 26, 2024, countries with many FCC-recognized test labs include, the United States (121), Taiwan (114), Japan (60), South Korea (40), Germany (20), United Kingdom (18), and Canada (15).

⁴⁸ For instance, as of March 26, 2024, there are 170 FCC-recognized test labs that are located in China.

⁴⁹ 47 CFR § 2.949.

⁵⁰ *See EA Security R&O and EA Security FNPRM*, 37 FCC Rcd 13493. That proceeding commenced in June 2021. *See Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 & EA Docket No. 21-233, Notice of Proposed Rulemaking and Notice of Inquiry, 36 FCC Rcd 10578 (2021).

⁵¹ *See generally EA Security R&O*, 37 FCC Rcd at 13509-98, paras. 32-263. Pursuant to sections 2(a) and (d) of the Secure and Trusted Communications Networks Act of 2019, and sections 1.50002 and 1.50003 of the Commission’s rules, the Federal Communications Commission’s Public Safety and Homeland Security Bureau (PSHSB) publishes a list of communications equipment and services that have been determined by one of the sources specified in that statute to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons (“covered” equipment). Secure and Trusted Communications Networks Act of 2019, Pub. L. No.

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particular entities – currently, Huawei, ZTE, Hytera, Hikvision, and Dahua (and their respective subsidiaries and affiliates), as well as certain services provided by particular entities. This list is derived from specific determinations made by enumerated sources, including certain Executive Branch agencies and Congress, under the Secure Network Act that certain equipment poses an unacceptable risk to national security.⁵² *The EA Security R&O* revised part 2 of the Commission’s rules concerning equipment authorization requirements and processes.⁵³ To help implement the prohibition on authorization of any “covered” equipment, applicants seeking equipment authorization are required to make certain attestations (in the form of certifications) about the equipment for which they seek authorization. These include attesting that the equipment is not prohibited from receiving authorization and whether the applicant is an entity identified on the Covered List as an entity producing “covered” communications equipment.⁵⁴ TCBs, pursuant to their responsibilities as part of the Commission’s equipment authorization program, review the applications and must ensure that only applications that meet all of the Commission’s applicable technical and non-technical requirements are ultimately granted, and that none of these grants are for prohibited equipment.⁵⁵

18. In affirming in the *EA Security R&O* its authority to prohibit authorization of communications equipment that had been placed on the Covered List, the Commission also noted that it has broad statutory authority, predating the Secure Networks Act and the Secure Equipment Act, under sections 302 and 303(e) of the Communications Act and other statutory provisions, to take into account national security concerns when promoting the public interest.⁵⁶

19. *Other Recent Commission Actions.* Since adoption of the *EA Security R&O, Order, and FNPRM* in November 2022, the Commission has taken several additional steps to address evolving

116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609 (Secure Networks Act); 47 CFR §§ 1.50002, 1.50003.

⁵² These enumerated sources specifically include particular Executive Branch bodies with appropriate national security expertise -- including the Department of Homeland Security (DHS), the Department of Defense (DOD), the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the Federal Bureau of Investigation (FBI) and the Department of Commerce – as well as Congress (under section 889(f)(3) of the National Defense Authorization Act of 2019)). *See* Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

⁵³ TCBs now have the additional responsibility to carefully review equipment applications and to ensure, when certifying equipment for compliance with Commission rules, that no “covered” equipment is authorized. *See, e.g., EA Security R&O*, 37 FCC Rcd at 13531-33, paras. 45-50 (requiring that any equipment produced by entities identified on the Covered List now can only be authorized under the Commission’s certification procedures, requiring that all applications for equipment authorization must be reviewed by TCBs to ensure that no “covered” equipment is authorized); *id.* at 13567-78, paras. 189-215 (providing significant Commission guidance on implementing the prohibition on authorizing “covered” equipment; TCBs have the responsibility for reviewing the applications for equipment certification, including the applicant attestations, and implementing this prohibition).

⁵⁴ *EA Security R&O*, 37 FCC Rcd at 13516-18, paras. 52-55 (requiring applicants to submit certain attestations concerning their equipment).

⁵⁵ *See, e.g., EA Security R&O*, 37 FCC Rcd at 13514-16, 13518, paras. 48, 50, 52, 55; *see also, e.g.,* 47 CFR § 2.962(e).

⁵⁶ *EA Report and Order*, 37 FCC Rcd at 13511-12, paras. 38-43. Among other things, the Commission noted that section 302 provides additional authority to make reasonable regulations governing RF devices, “consistent with the public interest, convenience, and necessity,” thus giving the Commission broad authority to implement other statutory responsibilities, including consideration of the national defense and the promotion of safety of life and property, citing section 1 of the Act. Furthermore, it noted that section 303(e) gives the Commission authority to “[r]egulate the kind of apparatus to be used with respect to its external effects,” and the Communications Assistance for Law Enforcement Act (CALEA) gives the Commission authority to prescribe rules necessary to protect networks from equipment that raises national security threats. *See id.* at 13511-12, para. 40-41. In the *EA Security FNPRM*, the Commission sought comment on several issues that could help ensure effective implementation of the prohibition on authorization of “covered” equipment. *See generally EA Security FNPRM*, 37 FCC Rcd at 13599-602, paras. 267-332.

national security concerns to protect the security of America’s critical communications networks and supply chains. In April 2023, in the *Evolving Risks Order and NPRM*, the Commission took additional steps to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act.⁵⁷ The Commission proposed, among other things, to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders.⁵⁸ The Commission stated that, in view of the evolving national security and law enforcement concerns identified in its recent proceedings revoking the section 214 authorizations of certain providers controlled by the Chinese government,⁵⁹ it believes that a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest.⁶⁰ In the *Evolving Risks Order*, the Commission required all international section 214 authorization holders to respond to a one-time collection to update the Commission’s records regarding their foreign ownership, noting that “the information will assist the Commission in developing a timely and effective process for prioritizing the review of international section 214 authorizations that are most likely to raise national security, law enforcement, foreign policy, and/or trade policy concerns.”⁶¹ In the *Evolving Risks NPRM*, the Commission proposed, among other things, to prioritize the renewal applications or any periodic review filings and deadlines based on, for example, “reportable foreign ownership, including any reportable foreign interest holder that is a citizen

⁵⁷ See generally *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Amendment of the Schedule for Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules*, IB Docket No. 23-119 and MD Docket No. 23-134, 38 FCC Rcd 4346, para. 1 (2023) (*Evolving Risks Order and NPRM*). Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission “that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line” 47 U.S.C. § 214(a); see *Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market*, IB Docket No. 12-299, Report and Order, 29 FCC Rcd 4256, para. 2, n.2 (2014) (*2014 Foreign Carrier Entry Order*) (“Any party seeking to provide common carrier telecommunications services between the United States, its territories or possessions, and a foreign point must request authority by application pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and section 63.18 of the Commission’s rules, 47 C.F.R. § 63.18.”).

⁵⁸ *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4346, 4369, paras. 1, 41.

⁵⁹ *Id.* at 4358, para. 15. In the context of section 214 authorizations, the Commission has also taken several additional steps to promote national security and law enforcement. In the November 2021 *China Telecom Americas Order on Revocation and Termination*, the February 2022 *China Unicom Americas Order on Revocation*, and March 2022 *Pacific Networks/ComNet Order on Revocation and Termination*, the Commission revoked, and in certain cases terminated for failure to satisfy certain conditions, certain carriers’ section 214 authority based on recommendations and comments from interested Executive Branch agencies regarding evolving national security and law enforcement concerns. *China Telecom (Americas) Corporation*, GN Docket No. 20-109, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021) (*China Telecom Americas Order on Revocation and Termination*), *aff’d*, *China Telecom (Ams.) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, File Nos. ITC-214-20020728-00361, ITC-214-20020724-00427, Order on Revocation, 37 FCC Rcd 1480 (2022) (*China Unicom Americas Order on Revocation*), *argued* No. 22-70029 (9th Cir. Feb. 15, 2023); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, File Nos. ITC-214-20090105-00006, ITC-214-20090424-00199, Order on Revocation and Termination, 37 FCC Rcd 4220 (2022) (*Pacific Networks/ComNet Order on Revocation and Termination*), *aff’d*, *Pacific Networks Corp. v. FCC*, 77 F.4th 1160 (D.C. Cir. 2023).

⁶⁰ *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4358, para. 15.

⁶¹ *Id.* at 4359, para. 16.

of a foreign adversary country,” as defined in the Commerce Department’s rule, 15 CFR § 7.4.⁶² The Commission also sought comment on whether to revise its ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%, noting that the current 10% threshold may not capture all of the foreign interests that may present national security, law enforcement foreign policy, and/or trade policy concerns in today’s national security and law enforcement environment.⁶³ The Commission also proposed, among other things, to require applicants to certify in their application whether or not they use equipment or services identified in the Commission’s Covered List.⁶⁴ The Commission stated that it intends to continue to collaborate with the relevant Executive Branch agencies and refer matters to the Executive Branch agencies where warranted.⁶⁵

20. On March 14, 2024, the Commission adopted the *Cybersecurity IoT Labeling R&O* to strengthen the nation’s cybersecurity protections by adopting a voluntary cybersecurity labeling program for wireless Internet of Things (IoT) products.⁶⁶ Through this IoT Labeling Program, the Commission will provide consumers with an FCC IoT label that includes the U.S. government certification mark (referred to as the Cyber Trust Mark) that provides assurances that an IoT product that bears the FCC IoT Label meets certain minimum cybersecurity standards and strengthens the chain of connected IoT products in their own homes and as part of a larger national IoT ecosystem.⁶⁷ The Order established a new administrative framework and regulatory structure to implement this voluntary program, with the Commission having program oversight while delegating certain responsibilities to new Cybersecurity Labeling Administrators and FCC-recognized testing labs (e.g., Cybersecurity Testing Labs) to evaluate whether particular IoT devices and products meet the prescribed criteria for obtaining the Cyber Trust Mark.⁶⁸ Among other things, the Commission also determined that entities that are owned, controlled by, or affiliated with “foreign adversaries,” as defined by the Department of Commerce, should be ineligible for purposes of the Commission’s voluntary IoT Labeling Program.⁶⁹ The Commission also generally prohibited entities that produce equipment on the Covered List, as well as entities named on the DOD’s list of Chinese military companies or the Department of Commerce’s Entity List, from any participation

⁶² *Id.* at 4375-76, para. 63; *see id.* at 4361, para. 20 (stating “[a] ‘foreign adversary’ country is defined in the Department of Commerce’s rule, 15 CFR § 7.4.”); 15 CFR § 7.4 (“Determination of foreign adversaries”) (identifying The People’s Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People’s Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime)). The Commission further proposed, among other things, to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify that they will not purchase and/or use equipment made by entities (and their subsidiaries and affiliates) on the “Covered List” as a condition of the potential grant of the application. *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4405-06, para. 125.

⁶³ *Id.*; *see generally id.* at 4392-96, paras. 89-97; *id.* at 4392, para. 89. *See also id.* at 4395, para. 95 (noting a 5% reporting threshold is consistent with information that the Committee on Foreign Investment in the United States (CFIUS) requires that parties to a voluntary notice filed with respect to transactions that they review); *id.* at 4394-95, para. 94 (noting that a 5% reporting threshold also is consistent with information that U.S. companies and their shareholders must provide to the Security and Exchange Commission).

⁶⁴ *Id.* at 4350, para. 4; *see generally id.* at 4405-06, paras. 124-26.

⁶⁵ *Id.* at 4362-63, para. 24.

⁶⁶ *See In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, (FCC 24-26), __ FCC Rcd __ (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*).

⁶⁷ *Id.* at para. 1.

⁶⁸ *See id.* at paras. 40-80.

⁶⁹ *See id.* at para. 61 (agreeing with commenters that the Commission should establish rules that are not subject to undue influence by foreign adversaries and noting that it would be problematic to rely on determinations made by such entities).

in the IoT Labeling Program.⁷⁰ Also, we specifically prohibited any of these entities from serving as a Cybersecurity Label Administrator or serving as an FCC-recognized test lab for testing products for compliance with forthcoming cybersecurity technical standards.⁷¹ The Commission concluded that these lists represent the determination of relevant Federal agencies that entities on these lists may pose a national security threat within their respective areas, and that it is not in the public interest to permit these entities to provide assurance to the public that their products meet the new cybersecurity standards for obtaining a Cyber Trust Mark.⁷²

III. DISCUSSION

21. In this NPRM, we propose and seek comment on potential revisions to the Commission's rules designed to promote the integrity of our equipment authorization program and ensure that it serves the Commission's goals in protecting our communications equipment supply chain from entities posing unacceptable national security concerns. First, we propose to prohibit from recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List (i.e., any named entity or any of its subsidiaries or affiliates) has direct or indirect ownership or control. Second, we seek comment on the extent to which the Commission should impose eligibility restrictions for TCBs and test labs based on lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security risks. Third, we propose and seek comment on collecting various ownership information from TCBs and test labs to strengthen our oversight and implement any affiliation prohibitions that may be adopted. Fourth, we seek comment on other aspects associated with implementation of our proposals as well as other considerations to strengthen our oversight of TCBs and test labs. These include clarification of current rules and applicable standards⁷³ to ensure the impartiality and integrity of TCBs.

A. Prohibiting Recognition of TCBs and Test Labs in which Entities Identified on the Covered List have Direct or Indirect Ownership or Control

22. In 2022 in the *EA Security R&O* the Commission adopted rules to prohibit authorization of certain equipment produced by entities named on the Covered List and adopted supply chain protections that include new informational requirements that seek to ensure that these untrustworthy entities do not adversely influence certification of equipment that poses unacceptable national security risks.⁷⁴ The Covered List is derived from specific determinations made by certain enumerated sources (particular Executive Branch agencies with national security expertise and Congress⁷⁵) under the Secure

⁷⁰ See *id.* at paras. 33, 60-61, 74. See DOD National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 1260H, 134 Stat. 3388, 3580 (2021). The list can be found at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF> (viewed January 31, 2024); Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> [https://perma.cc/STW5-B8GW].

⁷¹ See *In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, FCC 24-26 (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*). Cybersecurity Label Administrator helps manage the program and certifies applications for compliance with Commission requirements for obtaining a Cyber Trust Mark.

⁷² See, e.g., *Cybersecurity IoT Labeling R&O* at para. 60.

⁷³ See, e.g., ISO/IEC 17065.

⁷⁴ See generally *EA Security R&O*, 37 FCC Rcd 13493; see, e.g., 47 CFR §§ 2.903(b) (requiring that each entity named on the Covered List provide information on their subsidiaries and affiliates that produce “covered” equipment); 2.911(d)(5) (requiring applicants to submit particular information related to “covered” equipment).

⁷⁵ The Covered List is based on specific determinations made by sources enumerated under the Secure Networks Act – including the Department of Homeland Security (DHS), the Department of Defense (DOD), the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the Federal Bureau of Investigation

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Networks Act that certain equipment poses an unacceptable risk to national security. Congress has also made determinations in the Secure Networks Act that certain of these entities and their equipment pose an unacceptable risk to national security. In the future, Executive Branch agencies may add to the Covered List. Even before the Secure Networks Act, we designated Huawei and ZTE (along with their parents, affiliates, and subsidiaries) as “covered companies” that pose a unique threat to the security and integrity of our nation’s communications networks and supply chains because of their close ties to the Chinese government and military, and the security flaws in their equipment.⁷⁶

23. In light of these determinations from expert Executive Branch agencies and Congress about the serious national security risks posed by entities with equipment on the Covered List, we tentatively conclude that the Commission should not recognize or permit reliance on TCBs, test labs, or their accrediting bodies, or permit them to have any role in our equipment authorization program, if they have sufficiently close ties with Covered List entities.⁷⁷ Accordingly, we propose to restrict the eligibility of entities that may serve as TCBs or test labs based on, at a minimum, the Covered List. Specifically, we propose to prohibit from recognition by the Commission and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List (i.e., any named entity or any of its subsidiaries or affiliates) has direct or indirect ownership or control. Our proposed prohibition would preclude the use of such TCBs and test labs, as part of any equipment authorization-related reliance or testing, not only with regard to certification, but also Supplier’s Declaration of Conformity. We seek comment on this proposal.

24. Further, in the interest of national security, and out of an abundance of caution, we find that it is imperative that we not allow entities identified on our Covered List to use test labs they own or control to circumvent or otherwise undermine our prohibition on authorization of equipment identified on the Covered List or undermine the integrity of our supply chain. To that end, we note that OET has taken action to deny the re-recognition of a test lab apparently owned by an entity on the Covered List – Global Compliance and Testing Center of Huawei Technologies – while allowing this test lab to provide additional information on whether it is owned or controlled by Huawei Technologies Company or any other entity on the Covered List, and to show cause why it should be allowed re-recognition.⁷⁸ Accordingly, we direct OET to suspend, pending the outcome of this proceeding, recognition of any TCB or test lab for which there is sufficient evidence to conclude such TCB or test lab is owned or controlled by an entity identified on the Covered List,⁷⁹ while allowing such TCB or test lab thirty days from the date of such suspension to certify, and provide supporting documentation, that no entity identified on the Covered List holds a 10% or more direct or indirect ownership interest or controlling interest in the TCB or test lab. We believe this action is necessary to protect against additional national security risks to our equipment authorization program and supply chain, including protecting existing manufacturers from unknowing reliance on untrustworthy entities, pending the implementation of the additional ownership

(FBI) and the Department of Commerce – as well as Congress (under section 889(f)(3) of the National Defense Authorization Act of 2019)). See Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

⁷⁶ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11439-41, paras. 43-46 (2019) (*Supply Chain 1st R&O*) (initially designating Huawei and ZTE as “covered” companies that posed “a unique threat” to the security and integrity of the nation’s communications supply chains); *PSHSB Huawei Designation Order*, 35 FCC Rcd 6604; *PSHSB ZTE Designation Order*, 35 FCC Rcd 663; *Huawei Designation Order*, 35 FCC Rcd 14435.

⁷⁷ We note that this action also would be consistent with actions taken in the *EA Security R&O*, in which the Commission has precluded entities identified on the Covered List from obtaining SDoC authorization, requiring that any equipment produced by these entities file requests for authorization under our equipment certification procedures. See *EA Security R&O*, 37 FCC Rcd at 13526-27, paras. 78-79.

⁷⁸ Letter from Hermes, Jihad, Electronics Engineer, Laboratory Division, FCC Office of Engineering and Technology, to Global Compliance and Testing Center of Huawei Tec (April 22, 2024).

⁷⁹ See *EA Security R&O* at paras. 183-184 (defining affiliate and subsidiary in terms of ownership and control).

disclosures and transparency requirements we propose herein. Any burden on existing recognized TCBs or test labs should be minimal, as only those entities for whom OET has reason to question their ownership or control by an entity or entities identified on the Covered List will be impacted, and those TCBs or test labs will be given an opportunity to show cause why their FCC recognition should not be revoked for just cause. As we weigh the importance of our national security against these minimal measures to prevent entities on the Covered List from owning or controlling FCC-recognized TCBs or test labs, we find that the compelling interest outweighs any burden imposed by such temporary suspension.

B. Prohibiting Recognition of TCBs and Test Labs in which Other Entities that Raise National Security Concerns have Direct or Indirect Ownership or Control

25. We also seek comment on whether there are other types of direct or indirect ownership or control, or other types of influences beyond the Covered List determinations that potentially could adversely affect a TCB's or test lab's trustworthiness, or otherwise undermine the public's confidence. In recognition that TCBs and test labs have access to proprietary, sometimes sensitive information about suppliers and their devices, we seek comment on whether, and to what extent, the Commission should apply other lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security concerns.

26. The Covered List is only one source that identifies entities that raise national security concerns that potentially affect the communications equipment supply chain. Several Executive Branch agencies with particular national security responsibilities, and based upon specific statutory authorities, have recently developed or updated lists that identify entities, technologies, or services that they have determined raise national security concerns.⁸⁰

27. For example, the Department of Commerce maintains a list of "foreign adversary" countries⁸¹ that identifies any foreign government or foreign non-government person that the Secretary of Commerce has determined to have engaged in a "long-term pattern or serious instances of conduct significantly adverse to the national security interest of the United States or security and safety of United States persons."⁸² The Department of Commerce's list of foreign adversaries currently includes several foreign governments and foreign non-government persons, including China (including Hong Kong),

⁸⁰ These include two agencies – the Commerce Department and DOD – that also are authorized to make Covered List determinations about equipment that services that pose an unacceptable risk to national security. *See* Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

⁸¹ 15 CFR § 7.4 ("Determination of foreign adversaries"). Section 7.4 was promulgated pursuant to Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain." *See* Executive Order 13873, of May 15, 2019, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (May 15, 2019) (Executive Order 13873). Executive Order 13873 was issued pursuant to the President's authority under the International Emergency Economic Powers Act, the National Emergencies Act, and § 301 of Title 3 of United States Code. 50 U.S.C. § 1701 *et seq.* (authorizing the President to regulate commerce after declaring a national emergency in response to an unusual and extraordinary threat to the U.S. which has its source in whole or in part outside the U.S.); 50 U.S.C. §§ 1601-1651 (empowering the President to activate certain powers during a national emergency and imposing the procedural requirements when invoking those powers); 3 U.S.C. § 301 (delegation of functions). The list was first issued in an Interim Final Rule by the Department of Commerce, on January 19, 2021. Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain, Interim Final Rule, 86 Fed. Reg. 4909-01 (Jan. 19, 2021) (Interim Final Rule). Section 7.4(b) states further that the Secretary's determination of foreign adversaries is solely for the purposes of Executive Order 13873, this rule, and any subsequent rule promulgated pursuant to the Executive Order. 15 CFR § 7.4(b). The Executive Order, in turn, names the Commission as well as the U.S. Trade Representative and others as consultative agencies in implementing the Order. Executive Order 13873, 84 Fed. Reg. at 22869 (Section 1).

⁸² 15 CFR § 7.2. A "foreign adversary" country is defined in the Department of Commerce's rule, 15 CFR § 7.4, 218 and includes China (including Hong Kong), Cuba, Iran, North Korea, Russia, and Maduro Regime.

Cuba, Iran, and Russia.⁸³ As discussed above, the Commission has recently relied in part on this foreign adversary list (as well as the Covered List) in both the *Evolving Risks Order and NPRM* and the *Cybersecurity IoT Labeling R&O* when making proposals and taking particular actions, respectively, that serve to promote the Commission’s national security goals in those proceedings.⁸⁴

28. DOD, pursuant to section 1260H of the NDAA of 2021, has identified each entity that the Secretary of Defense has determined is a “Chinese military company” that is “operating directly or indirectly in the United States” and is “engaged in providing commercial services, manufacturing, producing, or exporting.”⁸⁵ This DOD list (1260H List) currently includes 73 entities, including three of the five equipment manufacturers listed on the Covered List.⁸⁶ Beginning in 2026, pursuant to other statutes, the DOD is prohibited from procurement from companies identified on the 1260H list.⁸⁷

29. Meanwhile, the Department of Commerce’s Entity List identifies entities that are reasonably believed to be involved in, or to pose a significant risk of being or becoming involved in, activities contrary to U.S. national security or foreign policy interests.⁸⁸ Among other things, the Entity

⁸³ 15 CFR § 7.4 (identifying The People’s Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People’s Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime)). The foreign adversaries identified in the current list have not changed since publication of the interim final rule in 2021. Interim Final Rule, 86 Fed. Reg. at 4911. Section 7.4(d) provides that the Secretary of Commerce will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend the list. 15 CFR §7.4(d).

⁸⁴ See discussion in paragraphs 20-21, above; see *Evolving Risks Order and NPRM*, at 4375-76, para. 63; *Cybersecurity IoT Labeling R&O*, __ FCC Rcd at __, para. 60.

⁸⁵ National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 1260H, 134 Stat. 3388, 3580 (2021). “Chinese military company” means an entity (not including natural persons) that (1) is “directly or indirectly owned, controlled, or beneficially owned by, or in an official or unofficial capacity acting as an agent of or on behalf of, the People’s Liberation Army or any other organization subordinate to the Central Military Commission of the Chinese Communist Party” or (2) “identified as a military-civil fusion contributor to the Chinese defense industrial base.” *Id.* at 1260H(d)(1). Available at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF>. Section 1260H does not on its own impose prohibitions on these companies.

⁸⁶ U.S. Department of Defense, DoD Releases List of People’s Republic of China (PRC) Military Companies in Accord with Section 1260H of the National Defense Authorization Act for Fiscal Year 2022, <https://www.defense.gov/News/Releases/Release/Article/3661985/dod-releases-list-of-peoples-republic-of-china-prc-military-companies-in-accord/> (last visited Feb 9, 2024). The actual list can be found at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF> (January 31, 2024).

⁸⁷ National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 805 (2023) (prohibiting DOD from entering into a contract for the procurement of goods and services from an entity on the 1260H list or contracting for goods and services that include goods or services produced or developed by an entity on the 1260H list or any entity subject to the control of an entity on the 1260H list). *Id.* § 805. The prohibitions do not extend to purchases of goods, services, or technology that connect goods or services to third party services or to components, which are items supplied to the federal government as part of an end item or of another component. *Id.*

⁸⁸ 15 CFR § 744.16. The End-User Review Committee (ERC), which is comprised of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, determines the entities to be added to or removed from the list. The Bureau of Industry and Security (BIS) is the entity that administers the Entity List for Commerce. See Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> [https://perma.cc/STW5-B8GW]. Inclusion on the Entity List subjects the entity to certain license requirements for the export, reexport, and/or transfer of specified items. Consistent with Executive Order 13873, the Secretary of Commerce may prohibit or restrict certain transactions that involve information and communications technology and services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries. 15 CFR § 7.1 *et seq.*; see Executive Order 13873. The Secretary of Commerce has determined the following (a) The Secretary has

(continued....)

List seeks to ensure that sensitive technologies do not fall into the hands of known threats.⁸⁹ As discussed above, in its *Cybersecurity IoT Labeling R&O* the Commission prohibited entities named on DOD's 1260H List or the Department of Commerce's Entity List (as well as entities producing equipment on the Covered List) from any participation in the Commission's IoT Labeling Program.⁹⁰

30. Further, there are various other Executive Branch agency lists that address national security concerns in addition to those above. For instance, the Commerce Department also publishes a Military End User List, which identifies foreign parties that pursuant to the Export Administration Regulations (EAR) are prohibited from receiving particular items, including certain telecommunications equipment and software, unless the exporter secures a license.⁹¹ These parties have been determined by the U.S. Government to be "military end users,"⁹² and represent an unacceptable risk of use in or diversion to a "military end use" or "military end user" in China, Russia, or Venezuela.⁹³ The Department of Treasury's Office of Foreign Assets Control, in coordination with the Department of State and DOD, administers various sanctions programs, including the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List (CMIC List),⁹⁴ which identifies individuals and companies as operating or having operated in the defense or surveillance technology sector of the People's Republic of China and from which U.S. persons are generally prohibited from purchasing or selling publicly traded securities.⁹⁵ In section 5949 of the NDAA for FY 2023, Congress prohibited

determined that the following foreign governments or foreign non-government persons are foreign adversaries: the People's Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People's Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime). The Secretary of Commerce's determination of foreign adversaries is based on multiple sources including: (1) the "National Security Strategy of the United States," (2) "[t]he Director of National Intelligence's 2016-2019 Worldwide Threat Assessments of the U.S. Intelligence Community; (3) "[t]he 2018 National Cyber Strategy of the United States of America," and (4) "[r]eports and assessments from the U.S. Intelligence Community, the U.S. Departments of Justice, State and Homeland Security, and other relevant sources. 15 CFR § 7.4(c). The Secretary of Commerce "will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend this list." 15 CFR § 7.4(d).

⁸⁹ 15 CFR § 744.16.

⁹⁰ See discussion in paragraph 21, above; see *Cybersecurity IoT Labeling R&O*, __ FCC Rcd at __, para. 60.

⁹¹ These restrictions are described in Supplement No. 2 of Part 744 of the Export Administration Regulations (EAR). See Supplement No. 7 to Part 744 of the EAR, 15 C.F.R. pt. 744, Supp. No. 7 (2024), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2714-supplement-no-7-to-part-744-military-end-user-meu-list/file>. The MEU List can be found at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/1770>.

⁹² 15 USC 744.21(g), available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2343-part-744-control-policy-end-user-and-end-use-based-2/file>.

⁹³ See *id.*

⁹⁴ U.S. Department of the Treasury, Office of Foreign Assets Control, Consolidated Sanctions List (Non-SDN Lists), available at Available at: <https://www.treasury.gov/ofac/downloads/ccmc/nscmiclist.pdf> (last visited Feb 9, 2024); see 15 CFR part 586. To date, there currently are 68 entities on the CMIC List. See generally <https://ofac.treasury.gov/consolidated-sanctions-list-non-sdn-lists> (last visited March 26, 2024). See Office of Foreign Assets Control, Notice of OFAC Sanctions Actions, 86 Fed. Reg. 30677, 30678-83 (Jun. 9, 2021) (adding 59 entities); Office of Foreign Assets Control, Notice of OFAC Actions, 86 Fed. Reg. 73842, 73843 (Dec. 28, 2021) (adding 1 entity); Office of Foreign Assets Control, Notice of OFAC Sanctions Actions, 86 Fed. Reg. 72680, 72681 (Dec. 22, 2021) (adding 8 entities).

⁹⁵ See Exec. Order No. 14,032, 86 Fed. Reg. 32,953 (2021) (addressing threat from securities investments financing certain Chinese companies); Exec. Order No. 13,959, 85 Fed. Reg. 75,140 (2020) (addressing threat from securities investments financing communist Chinese military companies); 50 U.S.C. §§ 1701-1706 (2023) (Int'l Emergency Economic Powers Act); 50 U.S.C. §§ 1601-1651 (2023) (National Emergencies Act); 31 C.F.R. pt. 586 (2024)

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executive agencies from procuring, obtaining, or contracting with entities to obtain any electronic parts, products, or services that include “covered semiconductor chips” produced by three Chinese companies (and their subsidiaries or affiliates).⁹⁶ The legislation authorizes DOD and the Commerce Department to designate other “covered products or services” if they determine them to be owned, controlled by, or connected to the government of a foreign country of concern, including China, Russia, North Korea, and Iran.⁹⁷

31. We seek comment on whether, and if so, the extent to which, we should rely upon any of the various lists developed by the Executive Branch agencies that involve particular determinations relating to national security as a source to identify entities that raise national security concerns warranting a prohibition on participation in our equipment authorization program. While each list is designed to support specific prohibitions or agency objectives, the national security objectives common throughout each may warrant that the Commission take a cautious approach, especially with respect to those products for which relevant Federal agencies have expressed other security concerns. Are any such lists particularly suitable, or ill-fitting, for the equipment authorization context? We also seek comment on whether the Commission should consider any other Executive Branch agency lists to rely upon as a source to identify entities that raise national security concerns and to restrict participation of those entities in our equipment authorization program. What other lists or sources of information should the Commission consider?

32. We note that the Commission has a longstanding policy of according deference to the Executive Branch agencies’ expertise in identifying risks to national security and law enforcement interests. With regard to each of these lists, to the extent that commenters recommend consideration of any of these lists with regard to eligibility for recognition of a TCB or test lab, we ask that commenters explain why such eligibility should be restricted based on the list, as well as any other considerations the Commission should take into account in implementing such a restriction. We invite comment on any other issues concerning consideration of any of these lists of Executive Branch determinations.

33. Further, we seek comment on other determinations on which we should rely to prohibit participation in our equipment authorization program. Specifically, should any “foreign entity of

(Chinese Military-Industrial Complex Sanctions Regulations); 88 Fed. Reg. 60,889 (2023) (Publication of Chinese Military-Industrial Complex Sanctions Regulations Web General Licenses 1, 1A, 1B, and 2); 87 Fed. Reg. 8735 (2022) (Chinese Military-Industrial Complex Sanctions Regulations); U.S. Department of Treasury, Office of Foreign Assets Control, Publication of Chinese Military-Industrial Complex Sanctions-related Frequently Asked Questions (June 1, 2022); U.S. Department of Treasury, Office of Foreign Assets Control, Issuance of Chinese Military-Industrial Complex Sanctions Regulations; Amendment of the Weapons of Mass Destruction Proliferators Sanctions Regulations (Feb. 15, 2022); U.S. Department of Treasury, Office of Foreign Assets Control, Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) List Updates; Administrative Updates to the SDN, Consolidated, NS-CMIC, and SSI Lists (various dates). In a fact sheet, OFAC stated that it “expects to use its discretion to target, in particular, persons whose operations include or support, or have included or supported, (1) surveillance of persons by Chinese technology companies that occurs outside of the PRC; or (2) the development, marketing, sale, or export of Chinese surveillance technology that is, was, or can be used for surveillance of religious or ethnic minorities or to otherwise facilitate repression or serious human rights abuse.” See FAQ 900: <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/900>.

⁹⁶ National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117–263, § 5949, 136 Stat. 2257, 2645 (2023). Specifically, this prohibition applies to any “covered semiconductor products or services” that are produced by Semiconductor Manufacturing International Corporation (SMIC), ChangXin Memory Technologies, Yangtze Memory Technologies Corp, or any subsidiary or affiliate of those entities. NDAA for FY 2023 § 5949(j)(3)(a), (b).

⁹⁷ NDAA for FY 2023 at § 5949(b)(2). Notably, this law provides that the Commission is not required to designate “covered semiconductor and services” to its Covered List. Specifically, under the Rule of Construction set forth in Section 5949, the Commission is not required to “designate covered semiconductor products or services to its Covered Communications Equipment or Services List maintained under [] the [Secure Networks Act] of 2019.” *Id.* at § 5949(a)(2)(A)(4).

concern” as defined by the CHIPS Act be prohibited from participation?⁹⁸ What about entities subject to exploitation, influence, or control by the government of a foreign adversary, such as foreign adversary state-owned enterprises, including their U.S.-based subsidiaries, or entities that conduct research, development, testing, and evaluation in support of the military or intelligence apparatus of a foreign adversary (i.e. defense contractors)? What about entities with ownership interests by municipal, state, or other governmental entities within a foreign adversarial country? Are there any other determinations reflecting national security risks and/or practices contrary to U.S. interests, such as entities with documented evidence of human rights abuses, forced labor, and similar practices, including entities who meet the criteria established by the Uyghur Forced Labor Prevention Act?⁹⁹ Are there any other determinations we should consider that would indicate the untrustworthiness of an entity in terms of our equipment authorization program?

C. Ownership, Control, or Influence by Entities that Pose an Unacceptable Risk to National Security

34. To further protect the nation’s telecommunications infrastructure and communications equipment supply chain from threats in an evolving national security landscape and to ensure the integrity of the equipment authorization program, we propose and seek comment on collecting various ownership and control information from TCBs and test labs.

35. We note that, outside the context of the equipment authorization program, the Commission and other government agencies have routinely adopted rules to identify direct or indirect ownership or control of entities by third parties in order to address national security, competition, or other concerns. The Commission in many cases has required regulated entities to disclose information regarding related parties, whether those other parties control the entity, or have an ownership interest in it, or have some other relationship with the entity that is relevant to the public interest. For example, applicants seeking a new FCC satellite license, a modification of a satellite license, or the assignment or transfer of a satellite license, must disclose certain information both about foreign ownership and corporate ownership.¹⁰⁰ The Commission’s rules also require the disclosure of ownership information and corporate ownership information that would assist the Commission’s public interest review of applications for international section 214 authority.¹⁰¹ We note that in the recent *Evolving Risks Order and NPRM*, the Commission sought comment on revising its ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%, noting that the current 10% threshold may not capture all of the foreign interests that may present national security, law enforcement foreign policy, and/or trade policy concerns in today’s national security and law enforcement

⁹⁸ CHIPS Act of 2022, Sec. 10162, Pub. L. 117-167, 136 Stat. 1366, 1635 (2022).

⁹⁹ See generally Pub. L. 117-78, 135 Stat. 1525 (2021).

¹⁰⁰ For example, FCC Form 312 asks each applicant for a satellite license to disclose, inter alia, whether the applicant is: (1) a foreign government or representative of a foreign government, (2) an alien or representative of an alien, (3) a corporation organized under the laws of a foreign government, (4) a corporation of which more than 20% of its capital stock is owned of record or voted by aliens or by a foreign government or by a foreign corporation, or (5) a corporation directly or indirectly controlled by another corporation of which more than 25% of the capital stock is owned by aliens, a foreign government, or a foreign corporation. And if the applicant is a corporation, Form 312 further asks it to submit the names, address, and citizenship of stockholders holding 10% or more of the applicant’s voting stock. See Form 312, questions 29-34 and 40. Form 312 also asks questions intended to inform the Commission of the character of the applicant. For example, it asks whether the applicant or any party to the application has had any FCC authorization or license revoked or whether it has had any application denied, and it further asks whether the applicant or any party to the application or any party directly or indirectly controlling the applicant has even been convicted of a felony by and state or federal court. See id., at questions 36 and 37. See generally 47 USC 310; 47 CFR §§ 1.2112; 25.114.

¹⁰¹ See *Evolving Risks Order and NPRM*, 38 FCC Red at 4354, 4392-93, paras. 8, 89, 92.

environment.¹⁰² With respect to wireless licenses, there are a number of rules requiring applicants and/or licensees to disclose certain information on ownership and control.¹⁰³ Similarly, with respect to radio and local television licenses, the Commission's media ownership rules require extensive disclosure of information.¹⁰⁴ The Commission likewise requires that entities seeking small business bidding credits in Commission spectrum license auctions have attributed to them revenues of parties with controlling interests in the entity, as well as other entities that those parties control and other entities within its own control.¹⁰⁵ In addition, such entities will have the revenues of parties with an interest in their spectrum licenses beyond a specified threshold attributed to them as well, to assure that those other parties are not using the entities as a conduit for spectrum access obtained with a bidding credit.¹⁰⁶ In order to enforce these ownership rules, the Commission requires applicants for such licenses to supply certain information.¹⁰⁷

36. Additionally, we note that other Executive Branch agencies also require entities to supply information on ownership and control so that the agencies can carry out their statutory responsibilities. For example, in the *2021 Standard Questions Order*, the Commission adopted a set of standardized national security and law enforcement questions (Standard Questions) that certain applicants and petitioners with reportable foreign ownership will be required to answer as part of the Executive Branch review process of their applications and petitions.¹⁰⁸ With respect to such applications or petitions that the Commission accepts for filing and refers to the relevant Executive Branch agencies for their review of any national security, law enforcement, and other concerns related to the foreign ownership, as part of the Commission's public interest review of the application or petition, the applicants and petitioners will be

¹⁰² *Id.* at 4392, para. 89; *see generally id.* at 4392-96, paras. 90-97. *See also id.* at 4395, para. 95 (noting a 5% reporting threshold is consistent with information that the Committee on Foreign Investment in the United States (CFIUS) requires that parties to a voluntary notice filed with respect to transactions that they review); *id.* at 4394-95, para. 94 (noting that a 5% reporting threshold also is consistent with information that that U.S. companies and their shareholders must provide to the Security and Exchange Commission).

¹⁰³ *See, e.g.,* FCC Form 601 (requesting information for applicants seeking wireless licenses other than personal radio); FCC Form 602 (requesting information of spectrum auction winners); FCC Form 603 (requesting information of parties seeking transfers or assignments of wireless licenses); and FCC Form 608 (requesting information of applicants seeking approvals to lease wireless licenses); *see generally* 47 CFR §§ 1.2112(a), 1.2114; *see also* 47 CFR §§ 1.9020, 9030, and 9035 (regarding spectrum leases). These disclosures help the Commission to assure compliance with applicable rules and statutes generally, as well as restrictions on foreign ownership. *See* 47 USC 310(a) and (b); *see also* FCC Form 605 (specialized applications not necessarily covered by 47 CFR 1.2112 still requiring certification that the applicant is not a foreign government or a representative thereof).

¹⁰⁴ *See* FCC Forms 323 and 323-E, Instructions, regarding ownership information, citing Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12,559 (1999), recon. granted in part, 16 FCC Rcd 1097 (2000); and Corporate Ownership Reporting and Disclosure by Broadcast Licensees, MM Docket No. 83-46, Report and Order, 97 FCC 2d 997 (1984), recon. granted in part, 58 RR 2d 604 (1985), further modified on recon., 61 RR 2d 739 (1986); Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398, 422-24, paras. 47-50 (2016). *See also* 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 18-349, FCC 23-117 (adopted Dec. 22, 2023) (describing and summarizing some of the Commission's media ownership rules).

¹⁰⁵ *See* 47 CFR § 1.2112(b)(1)(iv).

¹⁰⁶ *See* 47 CFR 1.2112(b)(1)(iii), requiring disclosure of information used to assess compliance with 47 FR 1.2110(c)(2)(ii)(J), requiring attribution of revenues based on agreements for spectrum access.

¹⁰⁷ *See* 47 CFR 1.2110(c)(2)(ii)(J); *see also* FCC Forms 175 (application to participate in competitive bidding); 609-T, 611-T (filings regarding post-auction status).

¹⁰⁸ *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Second Report and Order, 36 FCC Rcd 14848, 14849, para. 1 (2021) (*2021 Standard Questions Order*).

required to provide to the Committee information regarding all entities that hold or will hold an ownership interest of five percent or more in the applicant or petitioner in question.¹⁰⁹ The Commission has noted that this information is important to the Committee’s review of applications and petitions referred by the Commission for national security and law enforcement concerns¹¹⁰ and will assist the Committee’s determination whether to recommend to the Commission that grant of the application or petition is consistent with U.S. national security and law enforcement interests. Similarly, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) requires certain companies to file premerger notifications with the Federal Trade Commission and the Antitrust Division of the Department of Justice.¹¹¹ Companies required to submit a HSR pre-merger notification must supply certain information, including, *inter alia*, information on subsidiaries of the filing entity and minority shareholders of the filing entity and its ultimate parent entity.¹¹²

37. *TCB and test lab ownership and control reporting requirements.* In order to more effectively protect our equipment authorization program from the direction or influence of untrustworthy entities and ensure the integrity of the program, we propose to require any entity seeking to become an FCC-recognized TCB or test lab to submit to the Commission sufficient information for the Commission to determine the TCB’s or test lab’s ownership and control, consistent with any threshold determinations we may adopt, as proposed in this proceeding.

38. We believe that collection of certain general ownership and control information places the Commission in the best position to evaluate any ownership interest concerns that potentially may be raised regarding an entity’s impartiality or trustworthiness, particularly with regard to potential influence by entities that raise national security concerns. Further, we also believe that such ownership information could be relevant to establishing appropriate “qualifications and standards” under section 302(e) regarding private entities to which the Commission has delegated and entrusted certain responsibilities as part of its equipment authorization program. The Commission has broad authority under section 302, when delegating certification responsibilities to private organizations such as TCBs and test labs, to “establish such qualifications and standards as it deems appropriate” for certification and testing activities.¹¹³ In particular, such data can be instructive in efforts to bolster the integrity of the equipment authorization program, such as ensuring that TCBs are complying with applicable impartiality requirements and rules targeted at ensuring they are not owned or controlled by a manufacturer whose equipment they must examine.¹¹⁴

39. We propose that each TCB or test lab be required to report any entity that holds a 5% or greater direct or indirect equity and/or voting interest in the TCB or test lab. In other similar information collections, the Commission has agreed with Executive Branch determinations that a 5% threshold is appropriate because in some instances less-than-ten percent foreign ownership interest—or a collection of

¹⁰⁹ See *id.* at 14855-56, para. 14.

¹¹⁰ See *id.* at 14856-57, paras. 16-17.

¹¹¹ 15 U.S.C. § 18a.

¹¹² 16 CFR pt 801 and 803; see also Antitrust Improvements Act Notification and Report for Certain Mergers and Acquisitions Instructions (available at https://www.ftc.gov/system/files/ftc_gov/pdf/HSRFormInstructions02.27.23.pdf).

¹¹³ 47 U.S.C. § 302a(e)(3).

¹¹⁴ Pursuant to the provisions of the ISO/IEC 17065 standard, TCBs must meet numerous requirements, including ensuring impartiality; having an appropriate organizational structure and management; ensuring the competence of its personnel; establishing effective processes for application review, evaluation, and certification; and maintenance of records. See *generally* ISO/IEC 17065. For instance, regarding impartiality, the standard provides that the certification body, here the TCB, “shall be responsible for the impartiality of its certification activities, and shall not allow commercial, financial or other pressures to compromise impartiality.” ISO/IEC 17065, section 4.2.2. TCBs must structure and manage their certification activities so as to safeguard impartiality. See, e.g., *id.* sections 5.1.1, 5.2, Annex A.2 (“Impartiality”).

such interests—may pose a national security or law enforcement risk.¹¹⁵ We seek comment on this proposal. Alternatively, we seek comment on other levels and on whether we should raise or lower the ownership threshold for purposes of disclosure. If we were to require submission of any such ownership information, how frequently should this information be reported to the Commission? Should there be a distinction between foreign private ownership vs. foreign governmental ownership? We also seek comment on evolving ownership and how to ensure that the Commission is timely informed of changes in ownership of TCBs and test labs. Should additional reporting requirements apply to changes in ownership. If so, what thresholds of change should trigger such reporting?

40. Further, to implement the proposed prohibition of Covered List entities discussed above and align the prohibition with our equipment authorization program rules regarding prohibited equipment,¹¹⁶ we propose to prohibit from recognition by the FCC and participation in our equipment authorization program any TCB or test lab in which an entity identified on the Covered List controls or holds a 10% or more direct or indirect ownership interest. We seek comment on this proposal. We also invite comment on any other threshold interest level that commenters may believe appropriate, and request that they provide support for their views. We make this proposal while noting that, in the *EA Security R&O*, the Commission prohibited authorization of equipment produced by “affiliates” of entities named on the Covered List and defined an “affiliate” as “an entity that (directly or indirectly) own or controls, is owned or controlled by, or is under common ownership or control with another entity,”¹¹⁷ and defined the term ‘own’ in this context as to “have, possess, or otherwise control an equity interest (or the equivalent thereof) of more than 10 percent.”¹¹⁸ We therefore propose to revise the term “own” in this context to reflect ten percent or more, rather than more than 10 percent. We seek comment on this proposal. We further propose to require that TCBs and test labs that are currently recognized by the FCC must: (1) no later than 30 days after the effective date of any final rules adopted in this proceeding, certify that no entity identified on the Covered List or otherwise specified in our final rules has direct or indirect ownership or control of the relevant TCB or test lab, and (2) no later than 90 days after the effective date of any final rules adopted in this proceeding identify any entity (including the ultimate parent of such entities)¹¹⁹ that holds such ownership or control interest as our final rules require, currently proposed as 5% or more ownership, as discussed above. In keeping with this proposal, we also propose to clarify the requirement that every entity specifically named on the Covered List must report, pursuant to § 2.903(b), all of its subsidiaries and affiliates, not merely those that produce “covered” equipment. Further, we propose that, if a relevant TCB or test lab does not so certify, or provides a false or inaccurate

¹¹⁵ See *2021 Standard Questions Order*, 36 FCC Rcd at 14856, para. 16; see *id.* at 14855-57, paras. 14-17. The Commission further noted, “[t]he Committee staff adds that when ownership is widely held, five percent can be a significant interest and is consistent with requirements imposed by other agencies such as the Securities and Exchange Commission, which requires disclosure beyond that threshold.” *Id.* at 14856, para. 16. In the *Evolving Risks Order and NPRM*, the Commission is seeking comment, in consideration of an evolving national security and law enforcement landscape, on revising the ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%. *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4349, para. 4; see generally *id.* at 4392-96, paras. 89-97.

¹¹⁶ See 47 CFR § 2.903 (“Prohibition on authorization of equipment on the Covered List”).

¹¹⁷ 47 CFR § 2.903(c).

¹¹⁸ *Id.*

¹¹⁹ We propose to adopt the definition of “ultimate parent entity” used in the rules governing pre-merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which defines the ultimate parent entity as “an entity which is not controlled by any other entity.” 15 CFR § 801.1. The rules further define entity as “any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules.” *Id.* We seek comment on this proposal.

certification, we would suspend the recognition of any such TCB or test lab and commence action to withdraw FCC recognition under applicable withdrawal procedures, as discussed further below. We seek any additional comment on these proposals and their implementation.

D. Rule Revisions concerning TCBs and Test Labs

1. Telecommunications Certification Bodies

41. As discussed above, we propose to prohibit from recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List controls or holds a 10% or more direct or indirect ownership interest and seek comment on a similar prohibition with regard to other entities that raise national security concerns. We also propose to collect certain ownership information from TCBs and test labs. In this section, we propose and seek comment on additional issues regarding implementation of our proposed prohibition as well as any other revisions we may adopt in this rulemaking.

42. *Post-market surveillance.* We invite comment on whether the Commission should revise the post-market surveillance rules, policies, or guidance to expressly require such surveillance of granted authorizations, not only with respect to compliance with technical and attestation requirements, but also regarding compliance relating to the prohibition on authorization of “covered” equipment. We seek comment on reasonable practices TCBs could implement to identify erroneous authorizations of “covered” equipment. Are there best practices or analogous legal frameworks that could be leveraged here? We also invite comment on any other revisions that the Commission should consider in light of any revisions that the Commission adopts in this proceeding.

43. *TCB accrediting bodies.* In order for a TCB that is recognized by the FCC to remain so recognized, the TCB’s accrediting body must perform an assessment at least every two years to determine that the TCB remains competent to perform the work for the scopes for which it has been recognized.¹²⁰ Upon successful completion of the re-assessment by the accreditation body, the information is sent to the TCB’s designating authority, which then updates this continued accreditation in the FCC’s EAS database. Neither the ISO/IEC standards nor Commission rules include any specific restrictions on the ownership or control of an accreditation body. MRAs generally focus on the capability of accreditation bodies, and do not include specific provisions or restrictions on ownership other than impartiality.

44. We seek comment on potential revisions concerning the Commission’s rules and procedures for recognition and re-recognition of TCB accrediting bodies in light of any revisions that we may adopt in this proceeding. What revisions are needed, if any, to ensure that the accreditation body’s assessment of entities seeking to become TCBs includes a review of the TCB’s ownership and compliance with any requirements the Commission may adopt in this proceeding?

45. *Accreditation and reassessment of TCBs.* We seek comment on whether the Commission should clarify or revise its rules or procedures concerning the accreditation of TCBs to ensure that the TCBs can meet their responsibilities. We seek comment on what particular steps or procedures in the accreditation process could be implemented to examine how TCBs are structured, owned, or managed to safeguard impartiality and otherwise ensure that commercial, financial, or other pressures do not compromise impartiality on certification activities concerning prohibited equipment authorization.¹²¹ Under our rules, each TCB must be reassessed for continued accreditation at least every two years.¹²² If we were to decide to revise any rules or procedures to address impartiality or untrustworthiness concerns along the lines indicated above, we similarly propose to require any reassessment for continued accreditation to take those issues into account. Accordingly, we seek comment on the potential

¹²⁰ 47 CFR § 2.962(c)(7).

¹²¹ ISO/IEC 17065, sections 4.2.2, 5.1.1, and 5.2. See also *id.*, Annex A (“Impartiality”).

¹²² 47 CFR § 2.962(c)(7).

clarifications or revisions to the process for the periodic reassessment of TCBs for continued recognition by the Commission. Should, for instance, the Commission provide additional clarity on the reassessment process for submitting the request for reassessment or the review by the accrediting body? Are there other requirements that the Commission should adopt consistent with the issues raised above and our goals in this proceeding?

46. We also seek comment on whether any clarifications or revision of rules or procedures, either for a new accreditation or a continued accreditation, may implicate or affect U.S. international agreements such as MRAs concerning TCBs and TCB accreditation. Finally, to the extent any commenter proposes further clarification or revisions, we ask that they address any implications under the existing MRAs and whether and how to implement any suggested changes.

47. *FCC recognition of TCBs.* Considering the proposals and approaches we discuss above, we seek comment on whether the Commission should consider potential revisions to the rules or processes by which the Commission recognizes a TCB following its initial accreditation, and/or the process by which accreditation is subsequently extended on a periodic basis, including any further review the FCC would do to continue to recognize an accredited TCB.¹²³ Under our current rules, the Commission will recognize as a TCB any organization in the United States that meets the qualification criteria and is accredited and designated by NIST or NIST's recognized accreditor.¹²⁴ Additionally, the Commission will recognize as a TCB any organization outside the United States that meets the qualification criteria and is designated pursuant to the applicable bilateral or multilateral MRA.¹²⁵ We seek comment on whether we should consider making any clarifications or changes to the FCC recognition process to better ensure that TCBs have the capacity and procedures to meet their obligations under Commission rules, including any requirements we adopt in this proceeding. We invite comment on the Commission's rules and procedures regarding recognition of TCBs as qualified for authorizing equipment. Are there any changes that should be considered, either to the rules or procedures concerning the FCC's initial recognition of a TCB, or its continued recognition following any periodic reassessment or reaccreditation of TCBs? To the extent that commenters suggest any changes to the rules or procedures, we ask that they address any implications for MRAs applicable to equipment certification.

48. *Withdrawal of FCC recognition.* In addition, we seek comment on the Commission's rules and policies regarding withdrawal of FCC recognition of a TCB. Under our rules the Commission will withdraw recognition of a TCB if its designation or accreditation is withdrawn, if the Commission determines that there is "just cause" for withdrawing the recognition, or if the TCB requests that it no longer be designated or recognized.¹²⁶

49. We invite comment on the procedures by which the Commission would withdraw recognition of a TCB. Our rules require that the Commission notify a TCB in writing when it has concerns or evidence that the TCB is not certifying equipment in accordance with the Commission rules and policies, and request that the TCB explain and correct any deficiencies. The rules also provide particular procedures for withdrawal, including notification requirements such as providing TCBs at least 60 days to respond.¹²⁷ To the extent the TCB was designated and recognized pursuant to an MRA, the Commission must consult with the U.S. Trade Representative, as necessary, concerning any disputes involving the Telecommunications Trade Act of 1988.¹²⁸ In light of our proposals and issues raised above, we invite comment on whether the Commission should consider clarifications or revisions to our

¹²³ See 47 CFR §§ 2.960, 2.962.

¹²⁴ 47 CFR § 2.962(e)(1)(i).

¹²⁵ 47 CFR § 2.962(e)(1)(ii).

¹²⁶ 47 CFR § 2.962(e)(2).

¹²⁷ 47 CFR § 2.962(e)(2)

¹²⁸ See 19 USC 3106(a)(1)(B).

rules or policies, including the current notification requirements and procedures, and if so whether and to what extent such changes would affect the MRAs.

2. Measurement Facilities (Test Labs)

50. In this section, we propose and seek comment on additional issues regarding implementation of our proposed prohibition, as well as any other revisions we may adopt in this rulemaking, concerning test labs.

51. *Transparency.* With the existing transparency requirements and public availability requirements regarding any test lab data and information that TCBs rely upon, are there additional transparency requirements that would be necessary or appropriate in light of the proposal above? We ask that commenters recommending any particular changes address the implications of such changes for existing Commission rules and policies, including the consistency of such changes with ISO/IEC 17025, as well as any potential MRA-related implications.

52. *Test lab accrediting bodies.* We also invite comment on whether additional clarifications or modifications to the current processes regarding the accreditation of test labs are appropriate in light of our proposals and discussion above and our goals in this proceeding. We ask that commenters discuss what changes may be needed with regard to the accreditation body's expertise were the Commission to adopt its proposals to preclude the accreditation of any test labs associated with entities identified on the Covered List, as well as what changes may be needed in the event that the Commission concludes that other indicia about test labs affect their eligibility. Commenters should address the specific reasons for making changes that are not already addressed by Commission rules and policies. Finally, we ask that commenters address any other implications of their suggestions, including to the extent to which MRAs may be affected.

53. Also, in light of evolving national security risks, such as those that may be reflected in the Commerce Department's "foreign adversaries" list, we propose to preclude accreditation bodies associated with any such foreign adversary and seek comment. How would such association be determined? We also seek comment on whether test lab accreditation bodies should be located only in the United States or other MRA-partnered countries.

54. *Accreditation of test labs.* We also seek comment on the responsibilities and procedures by which FCC-recognized accreditation bodies conduct their assessment of prospective test labs and determine whether to accredit particular test labs. Should the Commission clarify its recognition requirements with regard to any of the ISO/IEC 17025 standards into its rules and procedures to ensure that the accreditation process for test labs is sufficiently robust to ensure that the requirements that labs be competent and impartial, are managed to safeguard impartiality, and generate valid test results, and that effective procedures are in place include ensuring that labs meet the ownership and control requirements adopted in this proceeding?

55. We also request comment on whether any of these Commission rules or policies concerning reassessment of test lab accreditation every two years should be clarified or revised in order to help ensure that untrustworthy labs are not recognized and do not be continued to be recognized by the Commission. We note that if we were to adopt clarifications of any ISO/IEC 17025 principles (e.g., on personnel, training, or effective management) to ensure that test labs conduct testing in a competent and impartial manner, we propose to require that the accreditation bodies reassess test labs under the new requirements or procedures. Should OET establish additional specific procedures for reassessment and FCC re-recognition of test labs? We seek comment on other potential revisions of our procedures for reassessment of test labs every two years, as well as potential revisions of our procedures for recognition and revocation of recognition. We also seek comment on any MRA-related issues/concerns that could arise from adoption of any of these possible rule revisions.

56. Finally, we seek comment on whether, in light of evolving national security concerns, the Commission should revisit its rules and procedures for recognizing test labs with regard to some or all

of the countries in economies that do not have an MRA with the United States.¹²⁹ To date, the Commission has recognized three accreditation bodies, all located in the United States, to designate test labs that are located in non-MRA countries. Under our current rules, these bodies accredit test labs based on ISO/IEC 17025, the same standard by which test labs located in the United States and other MRA-partnered countries are accredited.¹³⁰ The Commission has recognized numerous test labs located in economies that do not have an MRA with the United States. We also note that a number of these test labs also are owned and controlled by TCBs, which must be located in economies that have entered into MRAs with the United States.

57. *FCC recognition.* We seek comment on revisions to our rules concerning eligibility restrictions on entities that will be recognized by the Commission as a test lab in our equipment authorization program. We invite comment on whether any other clarifications or revisions to these Commission rules, policies, or guidance would be appropriate. For example, we seek comment on any necessary clarifications or revisions to the Commission's process for its initial recognition of test labs and to continued Commission recognition following any re-accreditation that occurs on a periodic basis at least every 2 years. We also invite comment on whether the Commission should adopt a more formal FCC review process before initially recognizing a test lab or continued recognition of test labs, and, if so, ask that commenters provide any suggestions they may have as to what such new procedures should look like. We also seek comment on any MRA-related issues or concerns that may arise from any changes to the current TCB recognition process.

58. *Withdrawal of recognition.* We propose and seek comment on clarifying or modifying the steps that the Commission should take when it determines whether to withdraw recognition of a test lab if the Commission were to adopt changes regarding the type of entities that it will recognize as test labs, or continue to recognize, under the equipment authorization program.

59. To the extent that the Commission ultimately adopts any of the proposals discussed above (e.g., making test labs associated with entities identified on the Covered List ineligible) or takes other actions to restrict eligibility on entities (e.g., based on other ownership interests or controlling issues that the Commission may prohibit), we propose that the Commission withdraw recognition of any test lab that cannot meet the revised requirements for an FCC-recognized test lab. We seek comment on this proposal, and on the procedures that the Commission should employ with regard to withdrawing continued recognition of such test labs.

60. As with our discussion of TCBs above, we also believe that repeated failure of a test lab to provide accurate test results, or a test lab's lack candor with regard to interactions with the Commission, would constitute sufficient basis for withdrawal of recognition, and propose that were such circumstances to be presented, the Commission would move forward with withdrawing any existing FCC recognition of such a test lab. We seek comment on this proposal. We also invite comment on other bases that would merit the Commission proceeding with withdrawing recognition of any existing test lab.

61. *Other issues.* Finally, to the extent not specifically asked above, we ask that commenters address whether and, if so, how any of our proposals herein might affect existing MRAs and/or necessitate further action regarding existing or potential MRAs. Commenters should address any legal authority issues that may arise and the extent to which MRAs or other trade policies may be affected by these proposals.

IV. PROCEDURAL MATTERS

62. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended

¹²⁹ The Commission revised its policies with regard to accreditation of test labs in non-MRA economies in 2016. *2016 EA MO&O*, 31 FCC Rcd 7426 (2016).

¹³⁰ *2016 EA MO&O*, 31 FCC Rcd at 7429, para. 10.

(RFA),¹³¹ 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.”¹³² Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Notice*. The IRFA is found in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of this document.

63. *Paperwork Reduction Act*. This document contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collection requirements contained in this document. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

64. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

65. *Ex Parte Rules – Permit but Disclose*. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹³³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

66. *Comment Period and Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to ET Docket 24-136.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission’s Electronic Comment Filing System (ECFS):

¹³¹ 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).

¹³² 5 U.S.C. § 605(b).

¹³³ *Id.* §§ 1.1200 *et seq.*

<https://www.fcc.gov/ecfs>. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

68. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

69. *Further Information.* For further information, contact Jamie Coleman of the Office of Engineering and Technology, at 202-418-2705 or Jamie.Coleman@fcc.gov.

V. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED, pursuant to the authority found in sections 1, 4(i), 229, 301, 302, 303, 309, 312, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 229, 301, 302a, 303, 309, 312, 403, and 503, section 105 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1004; the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. §§ 1601-1609; and the Secure Equipment Act of 2021, Pub. L. 117-55, 135 Stat. 423, 47 U.S.C. § 1601 note, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

71. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed Rules

Part 2 — FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336 unless otherwise noted.

2. Revise § 2.903 paragraph (b)(1) and the definition of “Affiliate” in paragraph (c) to read as follows:

§ 2.903 Prohibition on authorization of equipment on the Covered List.

* * * * *

(b) Each entity named on the Covered List as producing covered communications equipment, as established pursuant to § 1.50002 of this chapter, must provide to the Commission the following information: the full name, mailing address or physical address (if different from mailing address), e-mail address, and telephone number of each of that named entity’s associated entities (e.g., subsidiaries or affiliates).

(1) Each entity named on the Covered List as producing covered communications equipment must provide the information described in paragraph (b) of this section no later than [30 DAYS AFTER PUBLICATION OF FINAL RULES IN THE FEDERAL REGISTER];

* * *

(c) For purposes of implementing this subpart with regard to the prohibition on authorization of communications equipment on the Covered List, the following definitions apply:

Affiliate. The term “affiliate” means an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity; for purposes of this paragraph, the term ‘own’ means to have, possess, or otherwise control an equity or voting interest (or the equivalent thereof) of 10 percent or more.

* * *

* * * * *

3. Revise § 2.948 paragraph (b)(1) by adding paragraphs (viii) and (ix); redesignating paragraph (c)(9) as paragraph (c)(10); and adding new paragraphs (c)(9), (g), and (h) to read as follows:

§ 2.948 Measurement facilities.

* * * * *

(b) * * *

(1) * * *

(viii) Certification from each measurement facility that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more in the measurement facility; and

(ix) Documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the measurement facility.

* * * * *

(c) The Commission will maintain a list of accredited laboratories that it has recognized. The Commission will make publicly available a list of those laboratories that have indicated a willingness to perform testing for the general public. Inclusion of a facility on the Commission's list does not constitute Commission endorsement of that facility. In order to be included on this list, the accrediting organization (or Designating Authority in the case of foreign laboratories) must submit the information listed below to the Commission's laboratory:

* * * * *

(9) Each recognized laboratory must certify to the Commission, no later than [30 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect, that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more in the laboratory;

(10) Other information as requested by the Commission.

* * * * *

(g) No equipment will be authorized under either the certification procedure or the Supplier's Declaration of Conformity if such authorization is reliant upon testing performed at a laboratory or measurement facility in which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.

(h) Regardless of accreditation, the Commission will not recognize any test lab:

(1) In which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more;

(2) That fails to provide, or provides a false or inaccurate, certification as required in paragraph (c)(9) of this section; or

(3) That repeatedly fails to provide accurate test results or lacks candor with regard to interactions with the Commission.

4. Amend § 2.949 by adding paragraph (c) as follows:

§ 2.949 Recognition of laboratory accreditation bodies.

* * * * *

(c) The Commission will not recognize a laboratory accreditation body that has any affiliation with a foreign adversary as designated by the U.S. Department of Commerce at 15 CFR § 7.4.

5. Amend § 2.960 by adding paragraph (d) as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

* * * * *

(d) The Commission will not recognize any TCB for which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.

6. Amend § 2.962 by revising paragraph (2) and adding paragraphs (6) through (9) as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.**(e) *Recognition of a TCB.***

* * * * *

(2) The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

(i) The Commission will withdraw its recognition of a TCB if:

(A) The TCB's designation or accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the recognition;

(B) The TCB requests that it no longer hold its designation or recognition;

(C) The TCB fails to provide the certification required in paragraph (8); or

(D) The TCB fails to fulfill its obligations to the Commission to ensure that no authorization is granted for any equipment that is produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter.

(ii) The Commission will limit the scope of equipment that can be certified by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so.

(iii) The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

* * * * *

(6) The Commission will not recognize as a TCB any organization in which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.

(7) A TCB must have an organizational and management structure in place, including personnel with specific training and expertise, to verify that no authorization is granted for any equipment that is produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter.

(8) Each recognized TCB must certify to the Commission, no later than [30 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more of the TCB.

(9) Each recognized TCB must provide to the Commission, no later than [90 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect, documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the TCB.

* * * * *

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). As required by the Regulatory Flexibility Act of 1980, as amended (RFA),² the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁴

A. Need for, and Objectives of, the Proposed Rules

2. In the NPRM, pursuant to section 302(e) of the Communications Act,⁵ we seek further comment on several matters, proposed rules, and potential revisions to our rules to address issues that pose a threat to national security and may affect the ability of small entities to implement the prohibition on the use of Covered Equipment on our nation's communications networks and equipment supply chains. Specifically, we consider restrictions affecting telecommunications certification bodies (TCBs) and measurement facilities (test labs) as part of our equipment authorization program based on entities identified on our Covered List. In the NPRM, we seek comment on revisions to our TCB and test labs rules to further support the Commission's goals by considering adoption of new eligibility requirements, ensuring the impartiality, effectiveness, and trustworthiness of those third party entities to which the Commission is delegating significant responsibilities regarding equipment that potentially raises national security concerns. Lastly, we seek comment on revisions to part 2 of the Commission's rules which address how we recognize a TCB or test lab following its initial accreditation, and the process by which accreditation is extended, withdrawal of recognition of a TCB or test lab for "just cause," and procedures concerning TCBs and test labs in the equipment authorization process.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 301, 302, 303, 309, 312, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302a, 303, 309, 312, 403, and 503.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally

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

² 5 U.S.C. § 603. The RFA, 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).

³ *Id.* § 603(a).

⁴ *Id.*

⁵ 47 U.S.C. § 302a(e).

⁶ 5 U.S.C. § 603(b)(3).

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 that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, 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 Small Business Administration’s (SBA) Office of Advocacy, in general a small business is 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 33.2 million businesses.¹²

6. 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 The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁵

7. 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

⁷ *Id.* § 601(6).

⁸ *See id.* § 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.

¹⁰ 5 U.S.C. § 601(3)-(6).

¹¹ *See* SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹² *Id.*

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ *See* Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2022 Census of Governments¹⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number, there were 36,845 general purpose governments (county,¹⁹ municipal, and town or township²⁰) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²¹) with enrollment populations of less than 50,000.²² Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²³

8. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²⁴ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.²⁵ U.S. Census Bureau data for 2017 show that 275 firms in this

¹⁶ 5 U.S.C. § 601(5).

¹⁷ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁸ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²² While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

²⁵ See 13 CFR § 121.201, NAICS Code 517410.

industry operated for the entire year.²⁶ Of this number, 242 firms had revenue of less than \$25 million.²⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.²⁸ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.²⁹ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

9. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³⁰ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³¹ Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.³² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.³⁴ Of those firms, 1,039 had revenue of less than \$25 million.³⁵ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

10. *Fixed Satellite Small Transmit/Receive Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite Small Transmit/Receive Earth Stations. Satellite Telecommunications³⁶ is the closest industry with an SBA small business size standard. The SBA size standard for this industry classifies a business as small if it

²⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

²⁹ *Id.*

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³¹ *Id.*

³² *Id.*

³³ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

³⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

has \$38.5 million or less in annual receipts.³⁷ For this industry, U.S. Census Bureau data for 2017 show that there was a total of 275 firms that operated for the entire year.³⁸ Of this total, 242 firms had revenue of less than \$25 million.³⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.⁴⁰ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.⁴¹ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

11. *Mobile Satellite Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Mobile Satellite Earth Stations. Satellite Telecommunications⁴² is the closest industry with a SBA small business size standard. The SBA small business size standard classifies a business with \$38.5 million or less in annual receipts as small.⁴³ For this industry, U.S. Census Bureau data for 2017 show that there were 275 firms that operated for the entire year.⁴⁴ Of this number, 242 firms had revenue of less than \$25 million.⁴⁵ Thus, for this industry under the SBA size standard, the Commission estimates that the majority of Mobile Satellite Earth Station licensees are small entities. Additionally, based on Commission data as of February 1, 2024, there were 16 Mobile Satellite Earth Stations licensees.⁴⁶ The Commission does not request nor collect annual revenue information, and is therefore unable to estimate the number of mobile satellite earth stations that would be classified as a small business under the SBA size standard.

12. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

³⁷ See 13 CFR § 121.201, NAICS Code 517410.

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴¹ *Id.*

⁴² See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁴³ See 13 CFR § 121.201, NAICS Code 517410.

⁴⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁶ Based on a FCC Space Bureau, International Communication Filing System (ICFS), Advanced Search on February 1, 2024, <https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr030b.hts?set=>. Search Terms used - Nature of Application Service = SES - Satellite Earth Station; Application Type = All; Class of Station = MES – Mobile Earth Station; and under “Filing Status” = Current.

communications via the airwaves.⁴⁷ 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.⁴⁸ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵⁰ Of that number, 2,837 firms employed fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁵² Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁵⁴ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁵⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁵⁷

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁸ U.S. Census Bureau data for 2017 show that there

⁴⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁸ *Id.*

⁴⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report* at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.⁵⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁶¹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁶² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Facilities-Based Carriers (International Telecom Services)*. Facilities-based providers of international telecommunications services fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. Wired Telecommunications Carriers⁶³ is the closest industry with a SBA small business size standard.⁶⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services.⁶⁸ Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁶⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

16. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless

⁵⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁶² *Id.*

⁶³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁵ *Id.*

⁶⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁶⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁹ *Id.*

Telecommunications Carriers (*except* Satellite)⁷⁰ which encompasses business entities engaged in *radiotelephone communications*, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁷² Of this number, 2,837 firms employed fewer than 250 employees.⁷³ Thus, under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

17. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses.⁷⁴ Active PLMR licenses include 3,577 licenses in the 4.9 GHz band;⁷⁵ 19,011 licenses in the 800 MHz band;⁷⁶ and 2,716 licenses in the 900 MHz band.⁷⁷ Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

18. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and

⁷⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GJ, GO, GP, GU, IG, IQ, PA, PW, QM, QQ, RS, SG, SL, SP, SY, YB, YE, YF, YG, YI, YJ, YO, YP, YU, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁵ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁷ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GI, GR, GU, YD, YS, YU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

television broadcast and wireless communications equipment.⁷⁸ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.⁷⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.⁸¹ Of this number, 624 firms had fewer than 250 employees.⁸² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

19. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). Neither the SBA nor the Commission have developed a small business size standard applicable to broadcast auxiliary licensees. The closest applicable industries with a SBA small business size standard fall within two industries - Radio Stations⁸³ and Television Broadcasting.⁸⁴ The SBA small business size standard for Radio Stations classifies firms having \$41.5 million or less in annual receipts as small.⁸⁵ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.⁸⁶ Of that number, 1,879 firms operated with revenue of less than \$25 million per year.⁸⁷ For Television Broadcasting, the SBA small business size standard also classifies firms having \$41.5 million or less in annual receipts as small.⁸⁸ U.S. Census Bureau data for 2017 show that

⁷⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

⁷⁹ *Id.*

⁸⁰ See 13 CFR § 121.201, NAICS Code 334220.

⁸¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>. https://factfinder.census.gov/bkml/table/1.0/en/ECN/2012_US/31SG2//naics~334220

⁸² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸³ See U.S. Census Bureau, *2017 NAICS Definition*, “515112 Radio Stations,” <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

⁸⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁸⁸ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

744 firms in this industry operated for the entire year.⁸⁹ Of that number, 657 firms had revenue of less than \$25 million per year.⁹⁰ Accordingly, based on the U.S. Census Bureau data for Radio Stations and Television Broadcasting, the Commission estimates that the majority of Auxiliary, Special Broadcast and Other Program Distribution Services firms are small under the SBA size standard.

20. *Radio Frequency Equipment Manufacturers (RF Manufacturers)*. There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

21. *Fixed Microwave Services*. Fixed microwave services include common carrier,⁹¹ private-operational fixed,⁹² and broadcast auxiliary radio services.⁹³ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁴ Millimeter Wave Service (70/80/90 GHz),⁹⁵ Local Multipoint Distribution Service (LMDS),⁹⁶ the Digital Electronic Message Service (DEMS),⁹⁷ 24 GHz Service,⁹⁸ Multiple Address Systems (MAS),⁹⁹ and Multichannel Video Distribution and Data Service (MVDDS),¹⁰⁰ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰¹ Wireless Telecommunications Carriers (*except* Satellite)¹⁰² is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰³ U.S. Census Bureau data for 2017

⁸⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹¹ See 47 CFR part 101, subparts C and I.

⁹² See *id.* subparts C and H.

⁹³ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹⁴ See 47 CFR part 30.

⁹⁵ See 47 CFR part 101, subpart Q.

⁹⁶ See *id.* subpart L.

⁹⁷ See *id.* subpart G.

⁹⁸ See *id.*

⁹⁹ See *id.* subpart O.

¹⁰⁰ See *id.* subpart P.

¹⁰¹ See 47 CFR §§ 101.533, 101.1017.

¹⁰² See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁵ Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

22. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁶

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).¹⁰⁷ Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.¹⁰⁸ The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.¹⁰⁹ For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.¹¹⁰ Of that number, 310 firms operated with fewer than 250 employees.¹¹¹ Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

¹⁰⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁰⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁶ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁰⁷ See U.S. Census Bureau, *2017 NAICS Definitions, "334290 Other Communications Equipment Manufacturing,"* <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

¹⁰⁸ *Id.*

¹⁰⁹ See 13 CFR 121.201, NAICS Code 334290.

¹¹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

25. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹¹² Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹¹³ The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹¹⁵ Of this number, 624 had fewer than 250 employees.¹¹⁶ Based on this data, we conclude that a majority of manufacturers in this industry are small.

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

26. If adopted, the proposed rules set forth in the NPRM would likely impose new or additional reporting or recordkeeping or other compliance obligations on small entities. However, we seek further comment on any steps that could be taken to minimize significant economic impact to small businesses. Further, the proposals made in the NPRM may require additional provisions to the way the equipment authorization program operates under part 2 of the Commission's rules.

27. To promote the overall integrity of the equipment authorization program, we seek a number of potential revisions including adoption of new eligibility requirements to ensure trustworthiness of third party entities, periodic reassessment, and a possible ownership information collection requirement. Although the responsibilities of TCBs and test labs are different, these third party entities are required to meet certain broad principles set forth in the various ISO/IEC standards when performing their respective roles. We propose adopting eligibility restrictions on TCBs and test labs with regard to recognition or reliance based on associations of the TCB or test lab with entities identified on the Covered List. We seek comment as to whether there are other types of direct or indirect ownership or controlling interests, or other types of influences, that could adversely affect the TCB or test lab in carrying out its responsibilities.

28. In addition, TCBs are responsible for reviewing and evaluating applications for equipment certification for compliance with the Commission's applicable requirements and determining whether to grant or dismiss the application based on whether it is in accord with Commission requirements. Therefore, we find it necessary and appropriate to seek comment to ensure that, in accordance with ISO/IEC 17065 standard and Commission rules, TCBs do not grant certification for any equipment on the Covered List. Commission rules require that all requests for equipment certification must be submitted to TCBs in writing and must contain all of the information necessary for the TCB to process the request, including any required applicant attestations and testing results about or for the equipment for which authorization is sought. TCBs must comply with the Commission's rules and must

¹¹² See U.S. Census Bureau, *2017 NAICS Definition*, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹¹³ *Id.*

¹¹⁴ See 13 CFR § 121.201, NAICS Code 334220.

¹¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

be located in the United States or in countries that have entered into applicable Mutual Recognition Agreements (MRAs) with the United States. In addition, the Commission is considering possible steps for TCBs to provide certain general information about ownership.

29. We are also considering revisions to the process for the periodic reassessment of TCBs for continued recognition by the Commission. We currently require TCBs to be reassessed for continued accreditation at least every two years. However, we are open to potential clarifications on the procedures to the process that should be reflected in the rules or any Knowledge Database (KDB) to ensure that the TCB does not grant authorization of “covered” equipment.

30. The Commission has recognized 24 test lab accreditation bodies outside of the United States within its MRA with the USA. To ensure the Commission is in a better position to identify test labs that could pose such a national security risk now or in the future, we’re considering collecting general ownership information on test labs. The reporting could consist of direct or indirect equity or voting interests of at least 5%, or of greater than 5%. Alternatively, the reporting could require that test labs report other thresholds of ownership interest and affiliation. We seek comment as to the most effective approach that would provide the least amount of burden for small entities attempting to comply with the proposed rules, if adopted. Considering the Commission’s Covered List may evolve over time, it is vital this information is received but currently unknown of its frequency and the necessity of the distinction between private vs. governmental ownership. Nevertheless, we are considering a reasonable transition period and further questions concerning TCBs and test labs to ensure that our rules, policies, and procedures will advance our goal and protect the nation’s communications supply chain from equipment that may pose a risk to national security. This may require reporting or third-party recordkeeping.

31. At this time, the record does not include a detailed cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it would be necessary for small entities to hire professionals in order for them to comply with the proposed rules, should they be adopted. The Commission invites comment on the costs and burdens of the proposals in the NPRM and expects the information received in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the *Second FNPRM* are adopted.

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

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or 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.”¹¹⁷

33. In the NPRM, the Commission proposes to take steps and considers alternatives concerning how to minimize significant economic burdens to small entities as a result of the proposed rules, should they be adopted. For example, the Commission is proposing a requirement that TCBs have an organizational and management structure in place that ensures the TCB conducts the necessary level of review and scrutiny so as to prevent authorization of any “covered” equipment. In doing so, we consider

¹¹⁷ 5 U.S.C. § 603(c)(1)-(4).

what information and requirements would be appropriate for the TCB to provide, such as general ownership information, the name of the person responsible for determining whether equipment is “covered” equipment, as well as a statement providing a rationale for determining that the particular equipment that the TCB is authorizing is not “covered” equipment. Additional information could be required of the TCBs depending on information subsequently added to the record in response to the NPRM. Such information would allow the Commission to consider alternative approaches that take into account the limited budgetary and personnel resources experienced by small TCBs, such as simplified reporting mechanisms or providing small entities with a more manageable timeframe in which they could comply. We encourage comment from small entities that can provide us with information detailing what, if any, economic burdens they would face in order to comply with the proposed rules, if adopted.

34. In this proceeding, the Commission seeks comment on various steps it could take to balance its objective of fine tuning its equipment authorization program for TCBs and test labs without creating significant economic burdens to small entities. We believe that taking the approach of amending our part 2 rules to narrow the equipment authorization process will achieve the Commission’s national security goals in a cost-effective manner and seek further comment from third party entities and other interested parties on the best method to ensure the reliability of TCBs and test labs, and execute the prohibition on authorizing Covered List equipment under our part 2 equipment authorization rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.