

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

In the Matter of	)	
	)	
Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities	)	GN Docket No. 13-111
	)	
CellAntenna Corp. Request for Amendment of Section 2.807 of the Commission’s Rules (47 C.F.R. § 2.807) to Allow the Use of Radio Frequency Jamming Equipment by Local and State Law Enforcement Agencies and Emergency Response Providers	)	RM-11430
	)	
Petition of The GEO Group, Inc. for Forbearance from Application of Sections 302, 303, and 333 of the Communications Act of 1934, as amended, and Sections 2.803 and 2.807 of the Commission’s Rules to Allow State and Local Correctional Authorities to Prevent Use of Commercial Mobile Radio Services at Correctional Facilities	)	ET Docket No. 08-73
	)	
CTIA—The Wireless Association Petition for Declaratory Ruling Regarding the Unlawful Sale and Use of Cellular Jammers and Wireless Boosters and Repeaters	)	WT Docket No. 10-4
	)	
South Carolina Department of Corrections Request for Authorization of CMRS Jamming Within Correctional Institutions in Order to Improve Public Safety Under Conditions that Protect Legitimate CMRS Users	)	PRM09WT
	)	
Mississippi Department of Corrections Request for Authorization of Managed Access Systems Within Correctional Institutions in Order to Improve Public Safety Under Conditions that Protect Legitimate CMRS Users	)	PRM09WT
	)	
Global Tel*Link Corp. Request for Amendment of Sections 22.3(b), 1.931 and Subpart X of the Commission’s Rules and Creation of New Rule(s) to Authorize a Plurality of Technical Solutions to Eradicate the Unauthorized Use of Wireless Devices in Correctional Facilities	)	PRM11WT
	)	

CellAntenna Corp. Request for Amendment of ) PRM11WT  
 Section 20.5 of the Commission’s Rules, 47 )  
 C.F.R. § 20.5, to Categorically Exclude Service to )  
 Wireless Devices Located on Local, State, or )  
 Federal Correctional Facility Premises )

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: April 29, 2013**

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By the Commission: Commissioner Pai issuing a statement; Commissioner McDowell not participating.

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## I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking (Notice)*, we take steps to facilitate the development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide.<sup>1</sup> Prisoners’ use of contraband wireless devices to engage in criminal activity is a serious threat to the safety of prison employees, other prisoners, and the general public. Through this *Notice*, we seek to remove barriers to the deployment and viability of existing and future technologies used to combat contraband wireless devices.

2. We propose a series of modifications to the Commission’s rules to facilitate spectrum lease agreements between wireless providers and providers or operators of managed access systems used to combat contraband wireless devices.<sup>2</sup> Those proposed modifications are:

- Revising the Commission’s rules to immediately process *de facto* lease agreements or spectrum manager lease agreements for spectrum used exclusively in managed access systems in correctional facilities, and streamlining other aspects of the lease application or notification review process for those managed access systems in correctional facilities.
- Forbearing, to the extent necessary, from the individualized application review and public notice requirements of Sections 308, 309, and 310(d) of the Communications Act of 1934, as amended (the Act), for qualifying managed access leases.<sup>3</sup>
- Establishing a presumption that managed access operators provide a private mobile radio service (PMRS),<sup>4</sup> streamlining the process for seeking Special Temporary Authority

<sup>1</sup> In this *Notice*, “contraband wireless device” refers to any wireless device, including the physical hardware or part of a device – such as a subscriber identification module (SIM) – that is used within a correctional facility without authorization by the correctional authority. We use the phrase “correctional facility” to refer to any facility operated or overseen by federal, state, or local authorities that houses or holds prisoners for any period of time.

<sup>2</sup> See *infra* Parts II.D.1 and III.A.1 for a description of managed access systems. For purposes of this *Notice*, “managed access” and “managed access systems” are used generically to refer to a system or systems used to combat contraband wireless devices by capturing transmissions to and from wireless devices within correctional facilities.

<sup>3</sup> See 47 U.S.C. §§ 308, 309, 310(d).

(STA) to operate a managed access system, and seeking comment on whether to establish a requirement that managed access providers provide notice to nearby households and businesses prior to activation of a managed access system.

3. We also propose to require wireless providers to terminate service, if technically feasible, to a contraband wireless device if an authorized correctional facility official notifies the wireless provider of the presence of the contraband wireless device within the correctional facility.<sup>5</sup> We seek comment on the elements of the proposed notification and termination process, including who should be authorized to transmit a termination notification to the wireless provider, the form of such termination notice, and any safeguards necessary to ensure that service to legitimate wireless devices is not inadvertently terminated. We seek comment on the implication of our proposals on detection and managed access system operators' compliance with or liability under Section 705 of the Act and federal law governing the use of pen registers or trap and trace devices.<sup>6</sup> Finally, while we are limiting our proposals to managed access and detection solutions, we nevertheless invite comment on other technological approaches for addressing the problem of contraband wireless device usage in correctional facilities.

## II. BACKGROUND

### A. Contraband Wireless Devices in Correctional Facilities

4. Prisoners in federal, state, and local correctional facilities increasingly use wireless devices to engage in criminal activity while incarcerated, which poses a serious security challenge to correctional facility administrators, law enforcement authorities, and the general public.<sup>7</sup> For example, prisoners can use contraband wireless devices “to arrange the delivery of contraband drugs or other goods, transmit information on prison staff to or from non-inmates, harass witnesses or other individuals, or potentially coordinate an escape.”<sup>8</sup> The U.S. Government Accountability Office (GAO) reports several instances of contraband wireless devices being used to conduct criminal activity: an inmate in a federal correctional facility was caught running an identity-theft ring using a contraband cell phone; a death row inmate in a Texas facility used a contraband cell phone to threaten a state Senator and his family; an inmate in a Maryland facility used a contraband cell phone to order the murder of a state witness; and a New Jersey state inmate used a contraband cell phone to order the murder of his girlfriend who testified against him at trial.<sup>9</sup> These are just a few examples that make clear that prisoner possession of wireless

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<sup>4</sup> A PMRS is “neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service” and is not subject to common carrier obligations. See 47 C.F.R. §§ 20.3, 20.9.

<sup>5</sup> See *infra* Parts II.D.2 and III.B.1 for a description of detection technologies.

<sup>6</sup> 47 U.S.C. § 605(a) (prohibiting generally, except as authorized under Chapter 119, Title 18 of the U.S. Code, any person “receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio” from divulging or publishing the “existence, contents, substance, purport, effect, or meaning” to another person); 18 U.S.C. § 3121 (prohibiting the use of pen register and trap and trace devices without a court order, subject to several exceptions including when a provider of a communications service obtains the consent of the user). See also *infra* Part III.C.

<sup>7</sup> See U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Cell Phones Behind Bars at 1 (December 2009) (NIJ Bulletin), available at <https://www.ncjrs.gov/pdffiles1/nij/227539.pdf>.

<sup>8</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, BUREAU OF PRISONS: IMPROVED EVALUATIONS AND INCREASED COORDINATION COULD IMPROVE CELL PHONE DETECTION, GAO-11-893 at 23 (Sept. 2011) (GAO Report), available at <http://www.gao.gov/new.items/d11893.pdf>.

<sup>9</sup> *Id.* at 23-24.

devices is a serious threat to the safety and welfare of correctional facility employees and the general public.

5. Inmate use of contraband wireless devices has grown within the federal and state prison systems parallel to the growth of wireless device use by the general public.<sup>10</sup> In federal institutions and prison camps, GAO reports that the number of cell phones confiscated by the Federal Bureau of Prisons (BOP) grew from 1,774 in 2008 to 3,684 in 2010.<sup>11</sup> While not all states track or report data on the use of contraband wireless devices, the data that has been reported demonstrates significant growth. For example, California correctional officers seized approximately 261 cell phones in 2006; by 2011, correctional officers discovered more than 15,000 contraband wireless devices.<sup>12</sup> Further, a test of an interdiction technology in two California State prisons detected more than 25,000 unauthorized communication attempts over an 11 day period in 2011.<sup>13</sup> A similar interdiction system permanently installed in a Mississippi correctional facility reportedly blocked 325,000 communications attempts in the first month of operation, and as of February 2012, had blocked more than 2 million communications attempts.<sup>14</sup>

6. Congress, the Federal Government, and state and local correctional administrators recognize the need to address the proliferation of contraband wireless devices in correctional facilities.<sup>15</sup> A number of states are conducting trials and investing in technologies that will enable them to combat contraband wireless device use in correctional facilities.<sup>16</sup> At least 23 states and the District of Columbia have enacted legislation that officially designates – or allows local authorities to designate – wireless devices in correctional facilities as contraband, and in some cases provides penalties for possession of contraband wireless devices within correctional facilities.<sup>17</sup>

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<sup>10</sup> See U.S. DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, CONTRABAND CELL PHONES IN PRISONS: POSSIBLE WIRELESS TECHNOLOGY SOLUTIONS at 3 (Dec. 2010) (NTIA Report), available at [http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport\\_december2010.pdf](http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport_december2010.pdf). The NTIA Report was issued subsequent to a Notice of Inquiry seeking comment on technologies used to combat contraband cell phone use without negatively affecting other wireless users. See Preventing Contraband Cell Phone Use in Prisons, 75 Fed. Reg. 26733 (May 12, 2010) (NTIA NOI).

<sup>11</sup> GAO Report at 20 tbl.3.

<sup>12</sup> California Department of Corrections and Rehabilitation, Fact Sheet: Contraband Cell Phones in CDCR Prisons and Conservation Camps, at 1 (2012) (CDCR Fact Sheet), available at <http://www.cdcr.ca.gov/Contraband-Cell-Phones/docs/Contraband-Cell-Phone-Fact-Sheet-January-2012.pdf>; NTIA Report at 3.

<sup>13</sup> CDCR Fact Sheet at 2.

<sup>14</sup> Wireless Service Interruptions, GN Docket No. 12-52, Comments of Tecore Networks at 10 (filed Apr. 30, 2012) (Tecore Wireless Service Interruption Comments). See *infra* note 18 for a discussion of the Commission's wireless service interruption proceeding.

<sup>15</sup> See *infra* Parts II.B-C, D.1.

<sup>16</sup> See, e.g., *infra* Part II.D.1 (describing trials of managed access systems in several states).

<sup>17</sup> See Ariz. Rev. Stat. Ann. § 13-2501, 2505 (2010); Ark. Code Ann. § 5-54-119 (2009); Cal. Penal Code § 4575 (2007); Colo. Rev. Stat. Ann. § 18-8-204 (2005); Conn. Gen. Stat. § 53a-174b (2010); 11 Del. C. § 1256 (2008); Fla. Stat. Ann. § 944.47 (West 2008); O.C.G.A. § 42-5-18 (2008); 720 Ill. Comp. Stat 5/31A-1.1 through 1.2 (2011); LA. Rev. Stat. Ann. § 14:402 (2010); Md. Code Ann., Criminal Law § 9-417 (2007); Mich. Comp. Laws Ann. §§ 800.283a, 285 (2006); Miss. Code Ann. §§ 47-5-193, 195 (2008); Nev. Rev. Stat. Ann. § 212.165 (West 2007); N.C. Gen. Stat. Ann. § 14-258.1 (West 2009); N.D. Cent. Code Ann. § 12-44.1-21 (West 2009); 18 Pa. Cons. Stat. Ann. § 5123 (West 2002); Okla. Stat. Ann. Tit. 57 § 21 (West 2009); R.I. Gen. Laws Ann. § 11-25-14.1 (West 2011); Tenn.

(continued...)

## B. The Commission's Role

7. The Commission has taken several steps to facilitate efforts by state authorities to address contraband wireless device use in correctional facilities.<sup>18</sup> The Commission has granted special temporary authorizations and experimental special temporary authorizations to allow testing of managed access technologies, which utilize wireless base stations located within a correctional facility to capture and block transmissions to or from unauthorized devices.<sup>19</sup> In 2010, the Commission approved spectrum leases between CMRS providers and a managed access provider for the deployment of a managed access system in the Mississippi State Penitentiary in Parchman, Mississippi.<sup>20</sup> In 2012, the Commission approved spectrum leases between CMRS providers and several managed access providers for managed access system deployments in the Metropolitan Transition Center in Baltimore City, Maryland;<sup>21</sup> the Lieber Correctional Institution in Ridgeville, South Carolina;<sup>22</sup> the Stiles Unit in Beaumont, Texas,<sup>23</sup> and the

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Code Ann. § 39-16-201 (2006); Tex. Penal Code Ann. § 38.11 (2011); D.C. Code §§ 22-2603.01-03 (2011); W. VA. Code § 61-5-8 (2009); Wyo. Stat. Ann. § 6-5-213 (2007).

<sup>18</sup> The Commission is currently in the process of examining issues related to the intentional interruption of wireless service by government entities for public safety reasons. *See* Commission Seeks Comment on Certain Wireless Service Interruptions, GN Docket No. 15-52, *Public Notice*, 27 FCC Rcd 2177 (2012). The Commission sought comment on past practices and precedents, the bases for interrupting service, risks of interrupting service, the scope of and authority to interrupt, and legal constraints on interrupting wireless service. *Id.* at 2179-82. The Commission explicitly excluded “practices expressly prohibited by statute or regulation, such as signal jamming” from the scope of its inquiry. *Id.* at 2178. Four commenters to that proceeding addressed issues implicated in this proceeding, and we incorporate those comments into this proceeding. *See* Wireless Service Interruptions, GN Docket No. 12-52, Comments of CellAntenna Corp. (filed Apr. 30, 2012) (CellAntenna Wireless Service Interruption Comments); Wireless Service Interruptions, GN Docket No. 12-52, Comments of Global Tel\*Link Corp. (filed Apr. 30, 2012) (GTL Wireless Service Interruption Comments); Wireless Service Interruptions, GN Docket No. 12-52, Reply Comments of Global Tel\*Link Corp. (filed May 30, 2012) (GTL Wireless Service Interruption Reply Comments); Wireless Service Interruptions, GN Docket No. 12-52, Comments of the Texas Department of Criminal Justice (filed Apr. 16, 2012) (TDCJ Wireless Service Interruption Comments); Wireless Service Interruptions, GN Docket No. 12-52, Reply Comments of Tecore Networks (filed May 30, 2012) (Tecore Wireless Service Interruption Reply Comments); Tecore Wireless Service Interruption Comments.

<sup>19</sup> *See, e.g.*, Tecore Government Services, Special Temporary Authorizations, Call Signs WQMH278, WQMH382, WQMH383, WQMH384, WQMH385, WQMH386, and WQMH387; ShawnTech Communications, Experimental Special Temporary Authorizations, Call Signs WE9XNZ, WE9XRO, WG2XFD (ShawnTech Experimental STAs); Screened Images, Experimental Special Temporary Authorization, Call Sign WF9XUR (Screened Images Experimental STA); Blind Tiger Communications Experimental Temporary Authorization, Call Sign WG9XED (Blind Tiger Experimental STA). *See infra* Parts II.D.1 and III.A.1 for a more thorough description of managed access technologies.

<sup>20</sup> Tecore Government Services, Lease IDs L000007637, L000007704, L000007705, L000007706, L000007707, L000007734, and L000009517 (Tecore Parchman Leases).

<sup>21</sup> Tecore Government Services, Lease IDs L000009924, L000009925, L000009926, L000009927, L000009929, L000009930, L000010050, L000010076, L000010077, L000010078, L000010079, and L000010080 (Tecore Baltimore Leases).

<sup>22</sup> ShawnTech Communications, Lease IDs L000009174, L000009484, L000009485, L000009486, L000009487, L000009513, L000009514, L000009515, and L000009516 (ShawnTech Lieber Leases).

<sup>23</sup> ShawnTech Communications, Lease IDs L000009813, L000009878, L000010035, L000010038, L000010274, L000010276, and L000010280 (ShawnTech Stiles Leases).

McConnell Unit in Beeville, Texas.<sup>24</sup> We discuss these trials and deployments in further detail below in Part II.D.1.

8. FCC staff has also engaged in extensive outreach regarding the availability of new technologies to combat contraband wireless devices. This outreach includes regular interaction with state corrections officials and organizations from across the country, including the American Correctional Association (ACA) and the Association of State Correctional Administrators (ASCA), equipment and solution vendors, wireless providers, and federal agency partners including the Department of Justice's National Institute of Justice (NIJ), Federal Bureau of Prisons (BOP), and the National Telecommunications and Information Administration (NTIA).

9. On September 30, 2010, the Commission held a public workshop in partnership with NIJ and ASCA to discuss technologies currently available to combat contraband wireless device use and to address the statutory and public policy concerns related to radio signal jamming and managed access.<sup>25</sup> The discussion also focused on how to implement available technologies in accordance with the law and without jeopardizing the wireless service to public safety and law enforcement users.<sup>26</sup> This *Notice* continues our efforts to examine the Commission's appropriate role in facilitating the use of various technical solutions to combat contraband wireless devices.<sup>27</sup>

### C. Other Federal Efforts

10. Other federal agencies and Congress also recognize the serious problem of contraband wireless device use in correctional facilities, have studied the problem, and have taken steps to deter such use. In December 2010, NTIA, pursuant to Congressional direction and in coordination with the Commission, BOP, and NIJ, issued a report detailing the specific problem of contraband wireless device use in correctional facilities.<sup>28</sup> NTIA believes that "contraband cell phone use by prison inmates to carry out criminal enterprises is intolerable and demands an effective solution" and "[p]rison officials should have access to technology to disrupt prison cell phone use in a manner that protects nearby public safety and Federal Government spectrum users from harmful disruption of vital services, and preserves the rights of law-abiding citizens to enjoy the benefits of the public airwaves without interference."<sup>29</sup>

11. In 2010, Congress enacted legislation that classified wireless devices as "prohibited objects" within federal prisons.<sup>30</sup> A federal inmate who possesses a wireless device or anyone who

<sup>24</sup> ShawnTech Communications, Lease IDs L000009814, L000009877, L000010036, L000010037, L000010038, L000010275, L000010277, L000010278, and L000010279 (ShawnTech McConnell Leases).

<sup>25</sup> An archived video of the workshop, written remarks, presentations, statements, briefing sheet, and a transcript are available through the Commission's Website at <http://www.fcc.gov/events/workshopwebinar-contraband-cell-phone-use-prisons>. See Public Safety and Homeland Security Bureau to Hold Workshop/Webinar on Contraband Cell Phone Use in Prisons, *Public Notice* (Sept. 13, 2010) (Workshop Public Notice).

<sup>26</sup> Workshop Public Notice at 1.

<sup>27</sup> The Commission has also undertaken an examination of rates for interstate interexchange inmate calling services. See Rates for Interstate Inmate Calling Services, FCC 12-167, WC Docket No. 12-375, *Notice of Proposed Rulemaking*, 27 FCC Rcd 16629 (2012).

<sup>28</sup> See NTIA Report at 4.

<sup>29</sup> *Id.* at 1.

<sup>30</sup> Cell Phone Contraband Act of 2010, Pub. L. No. 111-225, 124 Stat. 2387 (2010) (codified at 18 U.S.C. § 1791). Other objects that federal prisoners are prohibited from possessing include but are not limited to firearms, ammunition, weapons, controlled substances, and U.S. or foreign currency. 18 U.S.C. § 1791(d).

provides a wireless device to an inmate is subject to a possible penalty of up to one year in prison, a fine, or both.<sup>31</sup> According to the bill's sponsor, Senator Dianne Feinstein, the bill is intended to end criminal activity perpetrated by prisoners using wireless devices in prisons and "punish those who would profit from smuggling cell phones and other wireless devices into [U.S.] federal prisons."<sup>32</sup> The legislation also required GAO to conduct a study of cell phone use by inmates and state and federal efforts to prevent prisoners or others from smuggling wireless devices into prisons.<sup>33</sup> The GAO report, released in September 2011, examined the proliferation of contraband wireless devices and federal and state efforts to combat contraband wireless devices,<sup>34</sup> and recommended actions for the Attorney General "[t]o help BOP respond more effectively to contraband cell phone challenges."<sup>35</sup>

12. BOP and NIJ are actively examining solutions to combat contraband wireless devices in correctional facilities. As NTIA reports: "Over the past 15 years, BOP has evaluated a large number of cell phone interdiction technologies."<sup>36</sup> NIJ continues to examine solutions to combat contraband wireless devices, convened a plenary panel as part of its annual conference, and co-sponsored with the Commission the contraband wireless device webinar in September 2010.<sup>37</sup> Additionally, NIJ's National Law Enforcement and Corrections Technology Center "assists state, local, tribal, and federal correctional agencies, as well as law enforcement and criminal justice agencies, in addressing technology needs and challenges, such as contraband cell phones."<sup>38</sup>

#### D. Current Technologies

13. Technological solutions available to correctional facility administrators to combat contraband wireless devices generally fall into three categories: managed access, detection, and radio signal jamming.<sup>39</sup> Each of these categories is described below. We seek comment on specific proposals regarding managed access and detection technologies outlined in Part III, and seek comment generally on

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<sup>31</sup> Pub. L. No. 111-225, sec. 2, 124 Stat. at 2387; 18 U.S.C. § 1791(b)(4). Specifically, whoever "in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object; shall be punished as provided in [18 U.S.C. § 1791(b)]." 18 U.S.C. § 1791(a). Section 1791(b) of Title 18 establishes punishments for violations of Section 1791 based on the type of prohibited object involved in the violation. 18 U.S.C. § 1791(b).

<sup>32</sup> Press Release, Senator Dianne Feinstein, House Approves Feinstein Measure to Prohibit Cell Phones in Prisons (July 21, 2010), *available at* <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=f6796124-5056-8059-7669-f0a81a3a664a>.

<sup>33</sup> Pub. L. No. 111-225, sec. 3, 124 Stat. at 2387-88.

<sup>34</sup> *See* GAO Report at 19-32. The GAO report also examined BOP telephone rates and the impact of a rate reduction for inmate calls. *Id.* at 12-18.

<sup>35</sup> *Id.* at 33. The recommended actions include evaluation plans for testing and deploying technologies to combat contraband wireless devices, such as managed access, detection, and jamming, as described below. *Id.* at 33-34.

<sup>36</sup> NTIA Report at 10. BOP has developed a set of four basic requirements through which it evaluates a given interdiction technology. BOP requires any technology used to combat contraband wireless devices to "work without impacting or collecting information from the general public;" "have no legal restrictions;" "work with all cellular phone protocols;" and have reasonable equipment and installation costs. *Id.*

<sup>37</sup> *Id.* at 11.

<sup>38</sup> GAO Report at 9.

<sup>39</sup> *See id.* at 10; NTIA Report at 1.



other technological solutions that are consistent with the statutory framework that has limited the use of jamming technologies.<sup>40</sup>

### 1. Managed Access

14. Managed access systems are micro-cellular, private networks that analyze transmissions to and from wireless devices to determine whether the device is authorized or unauthorized for purposes of accessing public carrier networks.<sup>41</sup> Managed access systems utilize base stations that are optimized<sup>42</sup> to capture all voice, text, and data communications within the system coverage area, which would be a correctional facility in the instant case.<sup>43</sup> When a wireless device attempts to connect to the network from within the coverage area of the managed access system, the system cross-checks the identifying information of the device against a database that lists wireless devices authorized to operate in the coverage area.<sup>44</sup> Authorized devices are allowed to communicate normally (*i.e.*, transmit and receive voice, text, and data) with the commercial wireless network,<sup>45</sup> while transmissions to or from unauthorized devices are terminated.<sup>46</sup> The managed access system may also provide an alert to the user notifying the user that the device is unauthorized.<sup>47</sup> The systems provide operational flexibility to the correctional facility administrators by allowing them to disable devices without having to physically remove them.<sup>48</sup>

15. A correctional facility or third party at a correctional facility may operate a managed access system if authorized by the Commission.<sup>49</sup> This authorization has to date involved agreements with the wireless providers serving the geographic area including the correctional facility and lease applications approved by the Commission.<sup>50</sup> A number of deployments and trials have been conducted or are ongoing, as listed below.

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<sup>40</sup> See 47 U.S.C. §§ 301, 302a(b)-(c), 333; 47 C.F.R. §§ 2.803(a), 2.807(d).

<sup>41</sup> See NTIA Report at 19.

<sup>42</sup> See *id.*; CTIA NTIA NOI Comments at 10; Tecore NTIA NOI Comments at 3. The systems are scalable, so it is possible to deploy a system that covers only a portion of a correctional facility. See Tecore NTIA NOI Comments at 4. This might be preferable due to budgetary constraints or operational need.

<sup>43</sup> See AT&T NTIA NOI Comments at 10-11. The systems can also reportedly adapt to accommodate changing technologies and protocols, such as LTE. See Tecore NTIA NOI Comments at 5-6, 20.

<sup>44</sup> NTIA Report at 19; AT&T NTIA NOI Comments at 11; CTIA NTIA NOI Comments at 11. Identifying information can include phone number, serial number, or subscriber identity module (SIM) information. See AT&T NTIA NOI Comments at 11; CTIA NTIA NOI Comments at 11.

<sup>45</sup> See NTIA Report at 19; CTIA NTIA NOI Comments at 11; MDOC Petition at 6-7; Verizon Wireless NTIA NOI Comments at 9.

<sup>46</sup> See NTIA Report at 19; CTIA NTIA NOI Comments at 11; MDOC Petition at 6-7.

<sup>47</sup> See CTIA NTIA NOI Comments at 11; MDOC Petition at 6-7. The system may also route the call to a designated official point of contact. See MDOC Petition at 6-7.

<sup>48</sup> See AT&T NTIA NOI Comments at 13; T-Mobile NTIA NOI Comments at 8-9; Tecore NTIA NOI Comments at 12.

<sup>49</sup> See 47 C.F.R. §§ 1.9001-1.9080. The Commission's spectrum leasing rules implicated by managed access systems are discussed in detail *infra* Part III.A.1.

<sup>50</sup> See ShawnTech Lieber Leases; ShawnTech McConnell Leases; ShawnTech Stiles Leases; Tecore Baltimore Leases; Tecore Parchman Leases.

- *California.* The California Department of Corrections and Rehabilitation (CDCR) has conducted trials of managed access systems at two state prisons.<sup>51</sup> Based on the results of the trials, the California Technology Agency issued an Invitation for Bids for a prime contractor to provide a pay telephone system for inmates and wards and a managed access systems in correctional facilities across the state.<sup>52</sup> The CDCR awarded the contract in April 2012 to Global Tel\*Link (GTL), and its managed access operator has received experimental authorization to test a managed access system in nine facilities.<sup>53</sup>
- *Maryland.* The Maryland Department of Public Safety and Correctional Services (DPSCS) conducted an in-depth analysis of contraband cell phone interdiction technologies in 2009.<sup>54</sup> Maryland DPSCS conducted trials of various non-jamming technologies at a decommissioned correctional facility in Jessup, Maryland, and a real-world study of non-jamming technologies in three commissioned correctional facilities.<sup>55</sup> Maryland DPSCS subsequently issued a Request for Proposals for the installation of managed access and detection systems in all of its prisons, and granted a contract to Tecore Networks (Tecore) to install a managed access system in the Metropolitan Transition Center in Baltimore City, Maryland.<sup>56</sup>

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<sup>51</sup> See CDCR Fact Sheet at 2.

<sup>52</sup> California Technology Agency, Office of Technology Services, Bid #IFB 11-126805 – Inmate Ward Telephone System and Managed Access System Services (rel. July 20, 2011) (IFB), <http://www.dts.ca.gov/std/calnet-inmate-ward.asp>. The IFB notes that not all facilities will use a managed access system. *Id.* Section 1 at 2.

<sup>53</sup> Press Release, CDCR, CDCR Awards System-wide Telephone Contract That Will Restrict Cellular Phones in Prisons (Apr. 16, 2012), *available at* [http://cdcrtoday.blogspot.com/2012/04/cdcr-awards-system-wide-telephone\\_16.html](http://cdcrtoday.blogspot.com/2012/04/cdcr-awards-system-wide-telephone_16.html); Screened Images Experimental STA. The California Council on Science and Technology (CCST), an independent organization that advises on science and technology policy in California, released a report on the efficacy of managed access in May 2012. CAL. COUNCIL ON SCI. AND TECH., THE EFFICACY OF MANAGED ACCESS SYSTEMS TO INTERCEPT CALLS FROM CONTRABAND CELL PHONES IN CALIFORNIA PRISONS (May 2012) (CCST Report), *available at* <http://www.ccst.us/publications/2012/2012cell.pdf>. The CCST recommended that alternative interdiction methods be examined before statewide adoption of managed access, including methods to intercept contraband devices rather than relying on technology to block communications, and recommended that CDCR conduct a one-year managed access pilot program prior to awarding a managed access contract. CCST Report at 7, 13-15. CCST also raised several concerns it has regarding managed access, including the lack of operational experience due to the relative infancy of the technology, the possibility of systems capturing authorized devices outside of a correctional facility, difficulties in upgrading systems to add new wireless technologies, and the ability of the systems to capture text and incoming calls in practice. CCST Report at 17-21. Tecore responded to CCST's report in its reply comments in the Commission's wireless service interruption proceeding. See Tecore Wireless Service Interruption Reply Comments at 11-21. Tecore asserts that the CCST report "reflects the assessment team's misunderstanding of the operation of a properly-deployed managed access system." Tecore Wireless Service Interruption Reply Comments at 17.

<sup>54</sup> See Maryland DPSCS, Cell Phone Detection/Jamming Demonstration, *available at* [http://www.dpscs.state.md.us/media/Cell\\_phone\\_detection\\_flashvideo.shtml](http://www.dpscs.state.md.us/media/Cell_phone_detection_flashvideo.shtml).

<sup>55</sup> See Maryland DPSCS, Overview of Cell Phone Demonstration (2009), [http://www.dpscs.state.md.us/publicinfo/media/pdf/FinalReport\\_2008-09-10.pdf](http://www.dpscs.state.md.us/publicinfo/media/pdf/FinalReport_2008-09-10.pdf); Maryland DPSCS, Non-Jamming Cell Phone Pilot Summary (2010), *available at* [http://www.dpscs.state.md.us/media/Cell-Phone-Pilot-Summary\\_Final.pdf](http://www.dpscs.state.md.us/media/Cell-Phone-Pilot-Summary_Final.pdf).

<sup>56</sup> See Maryland DPSCS, Request for Proposals: Cell Phone Interdiction Project Solicitation Number: DPSCS Q0011008, *available at* [http://collaboration.asca.net/system/assets/attachments/2020/MD\\_DOC\\_Cell\\_Phone\\_Detection\\_RFP\\_Amended\\_mb\\_edits\\_9\\_21\\_2010\\_2\\_.pdf?1296010779](http://collaboration.asca.net/system/assets/attachments/2020/MD_DOC_Cell_Phone_Detection_RFP_Amended_mb_edits_9_21_2010_2_.pdf?1296010779); Press Release, Maryland DPSCS, Cellular

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- *Mississippi.* In 2010, the Mississippi Department of Corrections deployed a managed access system at the Mississippi State Penitentiary, a maximum security prison in Parchman, Mississippi.<sup>57</sup> In its first month of operation, the system blocked a total of 325,000 call and message attempts, and has prevented more than 2 million calls and text messages through February 2012.<sup>58</sup>
- *South Carolina.* South Carolina has conducted trials of a managed access system at its Lieber Correctional Institution in Ridgeville, South Carolina.<sup>59</sup> The Commission has approved several spectrum leases sought by ShawnTech Communications (ShawnTech) for a permanent installation at the Lieber Correctional Institution, and the system is operational.<sup>60</sup>
- *Texas.* The Texas Department of Criminal Justice announced in late 2012 that it would install managed access systems in two state correctional facilities.<sup>61</sup> The Commission has approved a number of spectrum leases for ShawnTech for the managed access installations.<sup>62</sup>

## 2. Detection

16. Detection systems are used to detect contraband devices within a correctional facility by locating, tracking, and identifying radio signals originating from a device.<sup>63</sup> Detection systems use passive, receive-only technology and do not transmit radio signals.<sup>64</sup> As stated in the NTIA Report:

For accurate position location in an environment such as within a prison facility, detection technology triangulates a cell phone signal and requires correctional [facility] staff to physically search a small area (such as a prison cell) and seize the identified cell phone. This may involve placing direction-finding antennas or sensors (connected wire-line or wirelessly) to a computer to

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Detection Through Managed Access Coming to Maryland Prison System (rel. Apr. 23, 2012), *available at* [http://www.dpscs.state.md.us/publicinfo/news\\_stories/press\\_releases/20120423a.shtml](http://www.dpscs.state.md.us/publicinfo/news_stories/press_releases/20120423a.shtml); Tecore Baltimore Leases.

<sup>57</sup> Press Release, Mississippi Department of Corrections, “Operation Cell Block”: Commissioner Epps Shuts Down Illegal Inmate Cell Phone Usage (Sept. 8, 2010), *available at* [http://www.asca.net/system/assets/attachments/1535/MS\\_Illegal\\_Cell\\_Phone\\_Press\\_Release.pdf?1291917909](http://www.asca.net/system/assets/attachments/1535/MS_Illegal_Cell_Phone_Press_Release.pdf?1291917909).

<sup>58</sup> Tecore Wireless Service Interruption Comments at 10.

<sup>59</sup> See Letter from Leigh Blackwell, Assistant Attorney General, South Carolina Office of the Attorney General, to Jon Ozmint, Director, South Carolina Department of Corrections (Dec. 15, 2010), <http://www.scag.gov/wp-content/uploads/2011/03/ozmint-j-os-9173-12-15-10-use-of-cell-phones-by-inmates-in-scdc.pdf>; see also Jessica Mulholland, *Combating Contraband Cell Phones in Prisons*, GOVERNING, Nov. 16, 2010, *available at* <http://www.governing.com/topics/technology/Combating-Contraband-Cell-Phones-in-Prisons.html>. See ShawnTech Experimental STAs.

<sup>60</sup> See ShawnTech Lieber Leases.

<sup>61</sup> See Mike Ward, Prison Cell Phone Blocking to Start, Postcards: Texas Government and Politics Blog, Statesman.com (posted Sept. 4, 2012), [http://www.statesman.com/blogs/content/shared-gen/blogs/austin/politics/entries/2012/09/04/prison\\_cellphone\\_blocking\\_to\\_s.html/](http://www.statesman.com/blogs/content/shared-gen/blogs/austin/politics/entries/2012/09/04/prison_cellphone_blocking_to_s.html/).

<sup>62</sup> ShawnTech McConnell Leases; ShawnTech Stiles Leases.

<sup>63</sup> NTIA Report at 27.

<sup>64</sup> *Id.*

identify a cell phone call and locate the origin of the call. Additionally, hand-held cell phone detectors are able to scan frequencies within correctional facilities and detect the location of the caller.<sup>65</sup>

17. Detection systems can locate a device with an accuracy of within three to five meters.<sup>66</sup> Systems are usually capable of detecting across multiple frequencies, and can easily be programmed to add frequencies.<sup>67</sup> Because detection systems rely on passive receive-only technology, they do not pose an interference threat to wireless operations.<sup>68</sup>

### 3. Jamming

18. Radio signal jamming is the purposeful disruption of electronic devices, equipment, or systems via radio frequency interference.<sup>69</sup> A radio signal jamming device transmits on the same radio frequencies as wireless devices and base stations, disrupting the communication link between the device and the network base station, and rendering any wireless device operating on those frequencies unusable.<sup>70</sup> When used to disrupt wireless devices, radio signal jammers cannot differentiate between contraband devices and legitimate devices, including devices making 911 calls.<sup>71</sup> Radio signal jammers block all wireless communications on affected spectrum bands.<sup>72</sup>

19. The Act prohibits any person from willfully or maliciously interfering with the radio communications of any station licensed or authorized under the Act or operated by the U.S. Government.<sup>73</sup> Because radio signal jammers are used to willfully interfere with radio communications of such licensed or authorized stations, jammers are not permitted under the Commission's rules.<sup>74</sup> Similarly, the manufacture, importation, marketing, sale, or operation of radio signal jamming devices within the United States is prohibited, except for the sale to or use by the Federal Government.<sup>75</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *See id.* at 29; ITT NTIA NOI Comments at 18.

<sup>67</sup> NTIA Report at 27-28.

<sup>68</sup> *Id.* at 28.

<sup>69</sup> *See id.* at 13.

<sup>70</sup> *Id.* Interference is caused by "radiation, re-radiation, or reflection of electromagnetic spectrum." *Id.*

<sup>71</sup> *See id.* at 14-16.

<sup>72</sup> *See id.* at 14. Radio signal jammers may be unable to block all frequencies that may be used by prisoners, including Wi-Fi signals. *Id.*

<sup>73</sup> 47 U.S.C. § 333.

<sup>74</sup> *See, e.g.*, 47 C.F.R. § 2.915(a)(1) (providing, as a required element for granting an application for equipment certification, that the Commission find that the equipment be "capable of complying with pertinent technical standards of the rule part(s) under which it is to be operated"); *Id.* § 2.919 (requiring denial of certification application if Commission is unable to make the requisite Section 2.915(a) findings). Note that in none of the FCC rule parts has the Commission authorized the operations of jammers or prescribed technical standards for their operation. *See also* 47 U.S.C. § 302a (authorizing Commission to promulgate regulations that govern the interference potential of devices that are capable of emitting a sufficient amount of RF energy to cause harmful interference to radio communications); 47 U.S.C. § 333 (prohibiting willful or malicious interference to any radio communications or any authorized station).

<sup>75</sup> *See* 47 U.S.C §§ 301, 302a(b)-(c), 333; 47 C.F.R. §§ 2.803(a), 2.807(d).

20. Aside from the statutory constraints, wireless providers have indicated a preference for managed access solutions over jamming solutions,<sup>76</sup> on the grounds that managed access “can effectively prevent unauthorized communications without disrupting legitimate users.”<sup>77</sup> Wireless providers point to benefits of managed access over jamming solutions including the coordination and leasing process that occurs between the managed access provider and relevant licensees, and to system design that utilizes low power base stations optimized to prevent interference or the unintentional disruption of service to wireless devices operating legitimately outside of the target facility.<sup>78</sup>

### E. Petitions

21. Several entities – including state correctional agencies, equipment manufacturers, and others – filed petitions seeking Commission action on various issues regarding technological solutions to combat contraband wireless devices. Some petitioners urge Commission action with respect to the use of radio signal jammers in state and local correctional facilities.<sup>79</sup> In 2007, CellAntenna filed a petition for rulemaking to allow signal jamming equipment to be sold to and used by emergency response providers, including state and local law enforcement agencies.<sup>80</sup> The GEO Group filed a petition seeking forbearance from application or enforcement of Sections 302, 303, 333 of the Act and Sections 2.803 and 2.807 of the Commission’s rules to allow state and local correctional authorities and correctional facility operators to utilize radio frequency jamming devices to prevent the use of wireless devices in correctional facilities.<sup>81</sup>

<sup>76</sup> See AT&T NTIA NOI Comments at 1-2; CTIA NTIA NOI Comments at 9-13; Sprint Nextel NTIA NOI Comments at 1; T-Mobile NTIA NOI Comments at 7-9; Verizon Wireless NTIA NOI Comments at 9-10.

<sup>77</sup> T-Mobile NTIA NOI Comments at 8. See also AT&T NTIA NOI Comments at 11-12; CTIA NTIA NOI Comments at 12; Sprint Nextel NTIA NOI Comments at 1; Verizon Wireless NTIA NOI Comments at 9-10.

<sup>78</sup> See AT&T NTIA NOI Comments at 11-12; Sprint Nextel NTIA NOI Comments at 1-2; Verizon Wireless NTIA NOI Comments at 9.

<sup>79</sup> Amendment of Section 2.807 of the Commission’s rules (47 C.F.R. § 2.807) to Allow the Use of Radio Frequency Jamming Equipment by Local and State Law Enforcement Agencies and Emergency Response Providers, *Petition for Rulemaking*, RM-11430 (filed June 5, 2007) (CellAntenna 2007 Petition); Petition for Declaratory Ruling Regarding the Unlawful Sale and Use of Cellular Jammers and Wireless Boosters and Repeaters, *Petition for Declaratory Ruling*, WT Docket No. 10-4 (filed Nov. 2, 2007) (CTIA Petition); Petition of The GEO Group, Inc for Forbearance from Application of Sections 302, 303, and 333 of the Communications Act of 1934, as amended, and Sections 2.803 and 2.807 of the Commission’s Rules to Allow State and Local Correctional Authorities to Prevent Use of Commercial Mobile Radio Services at Correctional Facilities, *Petition for Forbearance*, ET Docket No. 08-73 (filed July 31, 2007) (The GEO Group Petition); Amendment of Sections 22.3(b), 1.931 and Subpart X of the Commission’s Rules and Creation of New Rules(s) to Authorize a Plurality of Technical Solutions to Eradicate the Unauthorized Use of Wireless Devices in Correctional Facilities, *Petition for Rulemaking*, PRM11WT (filed July 20, 2011) (GTL Petition); Request for Authorization of Managed Access Systems Within Correctional Institutions in Order to Improve Public Safety Under Conditions that Protect Legitimate CMRS Users, *Petition for Rulemaking*, PRM09WT (filed Aug. 21, 2009) (MDOC Petition); Letter from Michael W. McManus, Deputy General Counsel, Texas Department of Criminal Justice, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC (Oct. 22, 2008) (TDCJ Letter); Request for Authorization of CMRS Jamming Within Correctional Institutions in Order to Improve Public Safety Under Conditions that Protect Legitimate CMRS Users, *Petition for Rulemaking*, PRM09WT (filed Aug. 6, 2009) (SCDC Petition). The SCDC Petition was co-signed by corrections officials of state and regional prison systems from 31 states and the District of Columbia. SCDC Petition at App.A.

<sup>80</sup> CellAntenna 2007 Petition at 3. CellAntenna also filed comments in response to the Commission’s proceeding examining wireless service interruptions, in which CellAntenna argued the Commission should forbear from applying Section 333 in order to allow correctional facilities to interrupt contraband wireless devices. CellAntenna Wireless Service Interruption Comments at 11.

<sup>81</sup> The GEO Group Petition at 1. The Commission subsequently informed The GEO Group that because it is not a telecommunications carrier nor a class of telecommunications carriers the petition would not be deemed granted if

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The South Carolina Department of Corrections (SCDC) seeks rule changes to make wireless devices in correctional facilities unauthorized devices under the Commission's rules if their possession is prohibited by state or local law, arguing that this would circumvent the statutory prohibition against willful and malicious interference against licensed or authorized stations.<sup>82</sup> GTL included a similar request in its petition, which also seeks rule changes regarding managed access systems as discussed below.<sup>83</sup> The Texas Department of Criminal Justice sent a letter to the Commission's Enforcement Bureau seeking information on whether a process exists for it to be certified or permitted by the FCC to purchase and use radio signal jammers in prisons.<sup>84</sup> CTIA—The Wireless Association filed a petition opposing the use of radio signal jammers and seeking a declaratory ruling that the sale of radio signal jammers, except to federal users, is unlawful.<sup>85</sup>

22. Two petitioners seek rule changes to facilitate the deployment of managed access systems.<sup>86</sup> In 2009, the Mississippi Department of Corrections (MDOC) filed a petition for rulemaking to amend the Commission's rules to make the possession or use of a radio frequency device in a correctional facility illegal, and to authorize the operation of managed access systems to prevent unlawful device use.<sup>87</sup> More recently, GTL filed a petition seeking to require wireless carriers to agree to technically-feasible spectrum leases necessary for a managed access system, and other rule changes.<sup>88</sup>

23. In September 2011, CellAntenna filed a petition for rulemaking requesting rule changes that would require wireless carriers to terminate service to unauthorized wireless devices operating within correctional facilities.<sup>89</sup> CellAntenna proposes specific rules providing for a plan of detection and CMRS provider termination of service to identified contraband wireless devices.<sup>90</sup>

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the Commission failed to take action within the statutory period for action on petitions for forbearance. Letter from Julius P. Knapp, Chief, Office of Engineering and Technology, FCC, to Mitchell F. Brecher, Greenberg Traurig, LLP, ET Docket No. 08-73 (July 31, 2008).

<sup>82</sup> SCDC Petition at 12-13.

<sup>83</sup> GTL Petition at 19-23; *infra* Part III.A.3.

<sup>84</sup> See TDCJ Letter. TDCJ also filed comments in response to the Commission's proceeding examining wireless service interruptions, in which TDCJ argued that "the use of a wireless service managed access solution at a correctional facility for the purposes of preventing unauthorized wireless service usage from the facility is an acceptable method of wireless service interruption." TDCJ Wireless Service Interruption Comments at 1.

<sup>85</sup> See CTIA Petition at 6-10. CTIA's petition also sought a declaration regarding the use of wireless signal boosters, which the Commission addressed in a separate proceeding. See Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters, WT Docket No. 10-4, *Report and Order*, 28 FCC Rcd 1663 (2013).

<sup>86</sup> See MDOC Petition; GTL Petition.

<sup>87</sup> MDOC Petition at 11-12.

<sup>88</sup> GTL Petition at 9. GTL also urges the Commission to require licensees to provide spectrum to managed access providers on fair and economical terms in reply comments it filed in response to the Commission's proceeding examining wireless service interruptions. See GTL Wireless Service Interruption Reply Comments at 9-12.

<sup>89</sup> See Amendment of Section 20.5 of the Commission's Rules, 47 C.F.R. § 20.5, to Categorically Exclude Service to Wireless Devices Located on Local, State, or Federal Correctional Facility Premises, *Petition for Rulemaking*, PRM11WT, at 8 (filed Sept. 2, 2011) (CellAntenna 2011 Petition).

<sup>90</sup> *Id.*

### III. NOTICE OF PROPOSED RULEMAKING

#### A. Streamlining Authorization of Leases for Managed Access Systems for Use in Correctional Facilities

24. Managed access systems “permit[] calls by known users (*i.e.*, prison-authorized cell phone numbers) by handing them off to the network, but prevent others by denying access to the network.”<sup>91</sup> The Commission has previously applied its existing spectrum leasing rules and procedures to allow the operation of managed access systems by entities that lease the necessary spectrum from spectrum licensees.<sup>92</sup> Nonetheless, for the reasons discussed below, these rules and procedures are sufficiently time-consuming and complex that they can delay deployment of managed access systems, and therefore unnecessarily discourage their use. Below we set forth an overview of the existing spectrum leasing rules and procedures and propose to streamline the Commission’s spectrum leasing rules and processes to permit the more timely deployment of managed access systems. We seek comment on the proposals below, including the costs and benefits.

25. Throughout the *Notice*, where we seek comment on the costs and benefits of a proposal, we ask that commenters take into account only those costs and benefits that directly result from the implementation of the particular rules that could be adopted, including any proposed requirement or potential alternative requirement. Commenters should identify the various costs and benefits associated with a particular proposal. Further, to the extent possible, commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained, and any supporting documentation or other evidentiary support.

#### 1. Overview and Regulatory Environment for Managed Access

26. Managed access providers that have deployed systems have sought licensee consent and Commission authorization prior to operation of the systems, because they use base stations that transmit and receive signals on licensed frequencies.<sup>93</sup> Thus far, wireless providers and managed access providers have used spectrum lease agreements to negotiate the transfer of rights and have sought approval or provided notification of such agreements under the Commission’s spectrum leasing rules.<sup>94</sup> This approach requires negotiation of individual lease agreements with each wireless provider licensed to provide service where the correctional facility is located, and thus likely requires multiple lease negotiations and lease approvals or notifications for a single correctional facility. The number of leases is compounded where the provider seeks to deploy systems in multiple correctional facilities in different geographic locations served by multiple wireless providers. Additionally, as discussed below, the managed access lessee will likely

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<sup>91</sup> NTIA Report at 19.

<sup>92</sup> See ShawnTech Lieber Leases; ShawnTech McConnell Leases; ShawnTech Stiles Leases; Tecore Baltimore Leases; Tecore Parchman Leases.

<sup>93</sup> See 47 U.S.C. § 301 (requiring a license for the “transmission of energy or communications or signals by radio”); *id.* § 310(d) (requiring application to the Commission for the transfer of any rights under a license to another party, such as a managed access provider).

<sup>94</sup> See ShawnTech Lieber Leases; ShawnTech McConnell Leases; ShawnTech Stiles Leases; Tecore Baltimore Leases; Tecore Parchman Leases; 47 C.F.R. §§ 1.9001-1.9080. An effective managed access solution requires leasing agreements from all licensees providing service to the target area. GTL Petition at 10-11. The lessee may be the correctional facility, a local or state agency, a managed access provider, or some other third party.

seek to modify its regulatory status from commercial mobile radio service (CMRS)<sup>95</sup> to PMRS, which requires additional filings and results in processing delays.

27. Given the current lease processing challenges and transaction costs involved in the deployment of managed access systems, we seek to streamline our filing requirements and application processing mechanisms, particularly with respect to our leasing rules as applied to managed access systems in correctional facilities. Below is an overview of our current relevant rules and processes followed by proposed modifications.

28. *Leasing Procedures Applicable to Managed Access.* Under current rules, lessees and licensees have three spectrum lease options: long-term *de facto* leases, short-term *de facto* leases, and spectrum manager leases.<sup>96</sup> The leases carry different rights and responsibilities for both the licensee and the lessee, with *de facto* leases vesting greater rights and responsibilities in the lessee than spectrum manager leases.<sup>97</sup>

29. The Commission's rules require that the parties to a *de facto* lease file an application for approval of the lease with the Commission.<sup>98</sup> Parties to a spectrum manager lease must file a notification of the lease with the Commission and can commence operations without prior Commission approval after a short period.<sup>99</sup> The Commission's rules provide for expedited processing (by the next business day) for short-term *de facto* lease applications, and for long-term *de facto* lease applications and spectrum manager notifications that meet certain conditions.<sup>100</sup> To be accepted for processing, any application or notification

<sup>95</sup> CMRS is a mobile service that is provided for profit; interconnected; and "available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public;" or the functional equivalent of CMRS. 47 C.F.R. § 20.3. See also 47 U.S.C. § 332(c)(1).

<sup>96</sup> 47 C.F.R. §§ 1.9020 (spectrum manager lease), 1.9030 (long-term *de facto* lease), 1.9035 (short-term *de facto* lease). See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, 20624, 20671, ¶¶ 41, 160 (2003) (*First Secondary Market Report and Order*).

<sup>97</sup> Under a spectrum manager lease, the licensee "is directly and primarily responsible for ensuring the spectrum lessee's compliance with the Communications Act and applicable Commission policies and rules." 47 C.F.R. § 1.9020(b)(1). Under *de facto* lease arrangements, the licensee "retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement." *Id.* §§ 1.9030(a), 1.9035(a). See also *id.* § 1.9010 (establishing the *de facto* control standard). Also, under *de facto* lease arrangements, the "primary responsibility for ensuring compliance with Commission policies is transferred to spectrum lessees." See *First Secondary Market Report and Order*, 18 FCC Rcd at 20664, ¶137; See also 47 C.F.R. § 1.9030(c)(1).

<sup>98</sup> 47 C.F.R. §§ 1.9030(a), (e), 1.9035(a), (e).

<sup>99</sup> *Id.* § 1.9020(e)(1). Under general notification procedures, spectrum manager leases for more than one year must be filed at least 21 days prior to the date of operation. Spectrum manager leases of one year or less must be filed at least 10 days prior to the date of operation. *Id.* § 1.9020(e)(1)(ii). We note that under immediate approval processes, acceptance of the notification will be reflected in ULS on the next business day following the day the application is filed, and spectrum manager lessees may operate upon acceptance consistent with the terms of the leasing arrangement. *Id.* § 1.9020(e)(2)(ii).

<sup>100</sup> *Id.* §§ 1.9020(e)(2), 1.9030(e)(2), 1.9035(e). See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17512, ¶ 14 n. 42 (2004) (*Second Secondary Market Report and Order*) ("[U]nder the immediate approval process, spectrum leasing parties must submit qualifying applications and include the requisite filing fees. The [Wireless Telecommunications] Bureau will then process the application overnight and . . . indicate in our Universal Licensing System (ULS) that the application has

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must be “sufficiently complete,” including information and certifications relating to a lessee’s eligibility and qualification to hold spectrum, and lessee compliance with the Commission’s foreign ownership rules.<sup>101</sup> *De facto* applications must also be accompanied by the requisite filing fee.<sup>102</sup>

30. Long-term *de facto* lease applications and spectrum manager notifications must meet three additional criteria for immediate approval or processing.<sup>103</sup> First, the license cannot involve spectrum that may be used to provide an interconnected mobile service and that would result in a geographic overlap with licensed spectrum “in which the proposed spectrum lessee already holds a direct or indirect interest of 10 [percent] or more.”<sup>104</sup> Second, the licensee cannot be “a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules.”<sup>105</sup> Finally, the lease arrangement cannot “require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.”<sup>106</sup>

31. Under these rules, managed access systems involving more than one lease will not be afforded immediate approval or processing for long-term *de facto* applications or spectrum manager notifications subsequent to the first approved application or accepted notification. Because lessees of spectrum used in managed access systems require spectrum leases from multiple carriers covering a common location, subsequent applications will always be removed from expedited processing because they will result in a geographic overlap with spectrum held by the lessee that may be used to provide an interconnected mobile service.<sup>107</sup>

32. If a long-term *de facto* lease application is not subject to immediate approval, the application is placed on public notice generally within one week of filing<sup>108</sup> and petitions to deny may be filed within 14 days of the initial public notice date.<sup>109</sup> The Commission will take action to approve or deny the lease application or issue another public notice indicating the application will undergo further

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been approved.”). Applications and notifications are filed on FCC Form 608, “FCC Application or Notification for Spectrum Leasing Arrangement.” 47 C.F.R. § 1.913(a)(5).

<sup>101</sup> 47 C.F.R. §§ 1.9020(e)(2)(i), 1.9030(e)(2)(i), 1.9035(e).

<sup>102</sup> *Id.* §§ 1.9030(e)(1)(i), (e)(2)(i), 1.9035(e)(1). *See also id.* § 1.9020(e)(1)(i). We note that governmental entities are not required to pay filing fees. *See id.* § 1.1116(f) (“For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.”).

<sup>103</sup> *Id.* §§ 1.9020(e)(2)(i)(A)-(C), 1.9030(e)(2)(i)(A)-(C). All short-term *de facto* applications are processed via immediate approval procedures. *See id.* § 1.9035(e).

<sup>104</sup> *Id.* §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

<sup>105</sup> *Id.* §§ 1.9020(e)(2)(i)(B), 1.9030(e)(2)(i)(B).

<sup>106</sup> *Id.* §§ 1.9020(e)(2)(i)(C), 1.9030(e)(2)(i)(C). Short-term *de facto* lease applications must also meet this requirement. *Id.* § 1.9035(e)(1).

<sup>107</sup> *See id.* § 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

<sup>108</sup> *Id.* § 1.9030(e)(1)(ii) (explaining the general approval procedures, including for public notice, which are effective if the applicant does not meet the conditions under Section 1.9030(e)(2) of the Commission’s rules for immediate approval); *First Secondary Market Report and Order*, 18 FCC Rcd at 20668-69, ¶ 151 n.320 (“The Wireless Telecommunications Bureau currently expects to list leasing applications on weekly public notices.”).

<sup>109</sup> 47 C.F.R. § 1.9030(e)(1)(iii).

review no later than 21 days after the initial public notice date.<sup>110</sup> While spectrum manager leases that are disqualified from immediate processing are not subject to as thorough review as long-term *de facto* leases, the licensee is required to file the notification at least 21 days in advance of operation if the lease term exceeds one year, or ten days if the lease term is for one year or less.<sup>111</sup>

33. *PMRS Classification of Managed Access.* Managed access operators typically lease spectrum from wireless service providers that offer service on a CMRS basis and are regulated as CMRS providers under the Act and the Commission's rules.<sup>112</sup> CMRS providers are subject to common carrier obligations,<sup>113</sup> which include the obligation to provide service upon reasonable request, at just, reasonable, and non-discriminatory rates.<sup>114</sup> When a CMRS provider enters into a spectrum lease arrangement with a managed access provider, the managed access provider is also presumed to be providing CMRS.<sup>115</sup> However, because managed access systems are configured to operate solely within the confines of a correctional facility and are not intended to provide service to the public, they may qualify as PMRS,<sup>116</sup> exempting them from common carrier obligations.<sup>117</sup> Changing regulatory status requires the managed access provider to file a separate application for each lease that has been approved. In addition, for leases in certain services (*e.g.*, Personal Communications Service), the modification application must be placed on a 30 day public notice.<sup>118</sup> The requirement that a separate modification application be filed to change the regulatory status may therefore further delay deployment of a managed access system.

34. *Special Temporary Authority.* The Commission has authority under Section 309(f) of the Act to grant a STA if it finds "there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest."<sup>119</sup> Under current rules, an applicant must file a STA request at least ten days prior to the applicant's proposed operation,<sup>120</sup> and STA requests for spectrum that is licensed on a market basis – such as PCS and 700 MHz – must be filed manually.<sup>121</sup> Additionally, unless the STA application falls into one of several exemptions, it must be placed on public notice.<sup>122</sup>

35. We seek to facilitate the prompt deployment of managed access systems by reducing unnecessary filing burdens and barriers to expedited processing, including for modification of the lessee's

<sup>110</sup> *Id.* § 1.9030(e)(1)(iv)-(v). The Commission has 90 days to take action on an application requiring further review. *Id.* § 1.9030(e)(1)(v).

<sup>111</sup> *Id.* § 1.9020(e)(1)(ii).

<sup>112</sup> 47 U.S.C. § 332(c)(1); 47 C.F.R. § 20.9.

<sup>113</sup> *See* 47 U.S.C. § 332(c)(1).

<sup>114</sup> *Id.* §§ 201-202.

<sup>115</sup> *See* 47 C.F.R. §§ 1.9020(d)(6), 1.9030(d)(6), 1.9035(d)(1).

<sup>116</sup> *See id.* §§ 20.3, 20.9.

<sup>117</sup> *See id.* § 20.9.

<sup>118</sup> *Id.* § 20.9(b).

<sup>119</sup> 47 U.S.C. § 309(f).

<sup>120</sup> 47 C.F.R. § 1.931(a).

<sup>121</sup> Market-based licensees that file STA applications manually also have to file a simultaneous waiver of the electronic filing requirement. *See id.* § 1.913(b), (d) (requiring electronic filing, and permitting manual filing of Form 601 for several wireless services, excluding PCS).

<sup>122</sup> *Id.* § 1.931(a)(2).

regulatory classification to PMRS and for applications for STA. Through streamlined regulatory processes, stakeholders will be better equipped to combat the use of contraband wireless devices in correctional facilities. Below we outline several proposed rule changes that could expedite the lease application or notification process for managed access systems. We seek comment on the proposed changes and other proposals on the record.

## **2. Proposed Rules to Streamline Managed Access Spectrum Leasing Procedures**

36. We propose rule and procedural changes to facilitate a streamlined application process for spectrum leases entered into exclusively to combat the use of unauthorized wireless devices in correctional facilities, which we believe is in the public interest. The Commission's rules and procedures for immediate lease approval or processing were designed to streamline review of those leases that presumptively do not raise public interest concerns.<sup>123</sup> The proposed rules and procedural changes below are consistent with this intent. Contraband wireless devices in correctional facilities are a threat to the safety and welfare of correctional facility workers, other prisoners, and the general public,<sup>124</sup> and managed access is an important option in combating their use.<sup>125</sup> The proposals we outline below seek to balance the need to minimize regulatory barriers to deploying managed access systems in correctional facilities with the need to maintain an effective lease review process and the need to protect legitimate wireless users. We seek comment on the costs and benefits of the proposed rule and process changes, including the extent to which they will reduce barriers to the deployment of managed access systems.

37. We propose to immediately process qualifying lease applications or notifications for managed access systems in correctional facilities, and to exercise our forbearance authority as necessary to implement this proposal.<sup>126</sup> We also propose to reduce the need for multiple application filings by creating a presumption that managed access services in correctional facilities are PMRS. Finally, we propose to streamline the process for seeking STA for managed access operators seeking to use leased spectrum prior to obtaining a more permanent system authorization.

### **i. Streamlined Lease Application Approval and Lease Notification Processing**

38. We propose to modify the Commission's rules and procedures to make qualifying leases for managed access systems in correctional facilities subject to immediate processing and approval. Specifically, we propose to immediately process long-term *de facto* lease applications and spectrum manager notifications for managed access systems, even in cases where grant of multiple lease applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions.<sup>127</sup> Under this proposal, grant or acceptance of qualifying managed access leases

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<sup>123</sup> See *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512, ¶ 15 (explaining that leases that "do not potentially raise certain specified public interest concerns" should be granted pursuant to the application and immediate grant procedures).

<sup>124</sup> See *supra* Part II.A.

<sup>125</sup> See *supra* Part II.D.1.

<sup>126</sup> Under existing rules, which would apply to managed access leases as proposed herein, interested parties may petition for reconsideration of the grant or acceptance within 30 days of the public notice announcing the application was granted or accepted. 47 C.F.R. § 1.106(f).

<sup>127</sup> See 47 C.F.R. §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

would be indicated the following business day on the Commission's Universal Licensing System (ULS).<sup>128</sup> The accepted lease would then be effective upon the date set forth by the licensee and lessee in the lease application or notification.<sup>129</sup> We seek comment on the specific rule changes necessary to implement this proposal below.

39. *Completeness Requirement.* We propose to require applications or notifications for managed access leases to meet the completeness standards set forth in our existing spectrum leasing rules.<sup>130</sup> Under our proposed process, licensees and lessees would continue to file Form 608,<sup>131</sup> and would be required to complete all relevant fields and certifications on the form.<sup>132</sup> If an application or notification is sufficiently complete but the responses or certifications raise questions regarding the lessee's eligibility or qualification to hold spectrum, we propose that the application or notification will not be eligible for immediate approval or processing consistent with the Commission's current processes.<sup>133</sup> We seek comment on this proposal, including on the costs and benefits.

40. *Competition.* We propose to immediately process lease applications or notifications for managed access systems in correctional facilities regardless of whether the approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses that may be used to provide an interconnected mobile service.<sup>134</sup> Our rules requiring more lengthy case-by-case review of leases that would result in the lessee holding geographically overlapping spectrum are intended to focus on leases that "potentially raise competition concerns."<sup>135</sup> In the managed access context, however, we believe such review is unnecessary because managed access systems intended solely to combat contraband wireless devices in correctional facilities do not raise the same competitive concerns as multiple licenses leased in the same geography to provide a CMRS.<sup>136</sup> Managed access providers are not offering service to the public, and will generally contract directly with a correctional facility to be the sole managed access provider. We seek comment on this proposal and analysis.

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<sup>128</sup> ULS is the Commission's online database and filing system for applications and fees for most radio services. See FCC, ULS, <http://wireless.fcc.gov/uls/index.htm?job=home>. Applications and notifications for leases for managed access systems would continue to be placed on a weekly information public notice once granted or accepted, as required under the Commission's rules. 47 C.F.R. §§ 1.9020(e)(1)(iii), (2)(iii); 1.9030(e)(1)(ii); 1.9030(e)(2)(iii); 1.9035(e)(3).

<sup>129</sup> 47 C.F.R. §§ 1.9020(f), 1.9030(f) (establishing that the lease is effective in the Commission's records, and for application of the leasing rules, upon the date of the lease term as specified in the notification or application).

<sup>130</sup> Under the Commission's current spectrum leasing rules, applications or notifications that are subject to immediate processing or approval must be "sufficiently complete." *Id.* §§ 1.9020(e)(2)(i), 1.9030(e)(2)(i), 1.9035(e).

<sup>131</sup> *Id.* § 1.913(a)(5) ("FCC Form 608 is used by licensees and spectrum lessees . . . to notify the Commission regarding spectrum manager leasing arrangements and to apply for Commission consent for *de facto* transfer leasing arrangements . . ."). See also FCC Form 608, FCC Application or Notification for Spectrum Leasing Arrangement, [www.fcc.gov/forms](http://www.fcc.gov/forms).

<sup>132</sup> FCC Form 608 at 9-11. Additionally, *de facto* applications must be accompanied by the requisite filing fee. 47 C.F.R. §§ 1.9030(e), (e)(2), 1.9035(e).

<sup>133</sup> See 47 C.F.R. §§ 1.9020(e)(1), 1.9030(e)(1).

<sup>134</sup> See 47 C.F.R. §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

<sup>135</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17516-17, ¶ 25.

<sup>136</sup> In the *Second Secondary Market Report and Order*, the Commission explained that competition policies focused "on services that could potentially affect the product market for mobile telephony, which includes interconnected mobile voice and/or data services." *Id.* at 17518, ¶ 26.

41. *Designated Entity/Entrepreneur Eligibility.* We also propose to immediately process lease applications or notifications for managed access systems in correctional facilities regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions.<sup>137</sup> We believe managed access leases do not raise public interest concerns regarding compliance with these rules that would necessitate a more in depth review of the applications or notifications. The Commission's unjust enrichment rules and transfer restrictions are designed to prevent a designated entity or entrepreneur from gaining from the special benefits conferred with the designation by selling or transferring the license,<sup>138</sup> and to ensure that "small business participation in spectrum-based services is not thwarted by transfers of licenses to non-designated entities."<sup>139</sup> Further, the Commission's affiliation and controlling interests rules for designated entities are meant to prevent a non-eligible affiliate of a designated entity from gaining through the special benefits conferred with the designation.<sup>140</sup> These rules were crafted under authority to ensure that certain entities have the opportunity to participate in the provision of wireless service, and to impose transfer disclosures and anti-trafficking restrictions to avoid unjust enrichment.<sup>141</sup> Eliminating this certification for managed access leases covering correctional facilities does not impact the opportunity of another entity to participate in the provision of wireless service outside of the correctional facility, and likely will not result in unjust enrichment or transfer violations. It will similarly not impact the ability of a small business to participate in the provision of wireless services. We believe managed access lease arrangements implemented to combat contraband wireless devices in correctional facilities are in the public interest and override any potential marginal benefit a lessor might gain from leasing spectrum within the limited geographic area of a correctional facility. We seek comment on this proposal and analysis, and on any costs or benefits of this proposal.

42. *Procedural Requirements.* We propose to modify FCC Form 608 to allow managed access providers and CMRS licensees to identify that a proposed lease is a managed access lease exclusively for a system in a correctional facility. We also propose to require managed access providers to attach a written certification to the application or notification explaining the nature of the managed access system, including the location of the correctional facility, the managed access provider's relationship to the correctional facility, and the exact proposed coordinates of the leased spectrum boundaries. The information and certification on Form 608 will establish that the lease is to be used solely for a managed access system, and the coordinates will establish the geographic boundaries of the leased area.

43. As outlined in the *Second Secondary Market Report and Order* and incorporated into the Commission's rules, once a lease application grant or notification acceptance is announced by public notice, interested parties may petition for reconsideration of the grant or acceptance within 30 days of the public notice, and the Commission may reconsider the grant or acceptance on its own motion within 40

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<sup>137</sup> Short-term *de facto* leases similarly are not reviewed for implication of designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions. 47 C.F.R. § 1.9035(e). See also *First Secondary Market Report and Order*, 18 FCC Rcd at 20676, ¶ 176; *Second Secondary Market Report and Order*, 19 FCC Rcd at 17525, ¶ 44.

<sup>138</sup> See 47 C.F.R. § 1.2111.

<sup>139</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use; 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 406, ¶ 52 (1997).

<sup>140</sup> See 47 C.F.R. § 1.2110(c)(2); *Second Secondary Market Report and Order*, 19 FCC Rcd at 17538, ¶ 71. A controlling interest is an entity or individual with *de jure* or *de facto* control over the designated entity. 47 C.F.R. § 1.2110(c)(2).

<sup>141</sup> See *Second Secondary Market Report and Order*, 19 FCC Rcd at 17538, ¶ 71; 47 U.S.C. § 309(j)(4)(D)-(E).

days of the public notice.<sup>142</sup> Regarding enforcement mechanisms, the Commission “retains the right to investigate and terminate any spectrum manager leasing arrangement if it determines, post-notification, that the arrangement . . . is otherwise in violation of the rules of this chapter, or . . . raises public interest concerns.”<sup>143</sup> The Commission further requires that agreements between licensees and spectrum lessees concerning spectrum leasing arrangements must contain a provision that the “spectrum lessee must comply at all times with applicable rules set forth in this chapter and other applicable law and that spectrum leasing arrangement may be revoked, cancelled, or terminated by the licensee or Commission if the spectrum lessee fails to comply with the applicable requirements.”<sup>144</sup> The Commission has also provided that *de facto* spectrum lessees are issued authorizations that bring them within the scope of the direct forfeiture procedures under Section 503(b) of the Act.<sup>145</sup> Finally, as stated in the *Second Secondary Market Report and Order*, to the extent the Commission determines that any certification made by the licensee or lessee “is not true, complete, correct, and made in good faith, the Commission will be vigilant in taking appropriate enforcement action, potentially including forfeitures or termination of the spectrum leasing arrangement.”<sup>146</sup> We seek comment on our proposal to continue to apply these rules to managed access leases, and whether these protections are sufficient to ensure rule compliance in the context of Commission authorization of managed access systems deployed to combat contraband phone use, and whether any additional conditions or alternative mechanisms are required to further the public interest. We also seek comment on any associated costs or benefits of our proposed approach.

44. Finally, we seek comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility in which a managed access system is installed. If so, we seek comment on the form of such notification, for example, an informational notice on the company’s website, a placard or informational flyer on the doors of households and businesses within a certain proximity to the correctional facility, or a newspaper advertisement or other public notice. Additionally, if notification were required, we seek comment on the methods that managed access vendors should offer to wireless users to contact the managed access provider to address any impact on nearby consumer wireless services. We also seek comment on how the appropriate boundary of the notice area would be established, the timeframe for providing notice within that boundary, and related concerns. Lastly, we seek comment on the costs that would be associated with notification.

## ii. PMRS Presumption

45. We propose to amend Section 20.9 of our rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers shall be presumptively treated as PMRS. We propose to require the lessee to certify on the application or notification that the leased spectrum will be used solely for the operation of a managed access system at a correctional facility. Where managed access operations are confined to a correctional facility and are not intended for provision of commercial service to the public, we believe that PMRS classification is appropriate under our rules because the provider is not offering service to the public or a substantial portion of the public.<sup>147</sup> Under

<sup>142</sup> See *Second Secondary Market Report and Order*, 19 FCC Rcd at 17520, 17527-28, ¶¶ 31, 49; 47 C.F.R. §§ 1.106(f), 1.117.

<sup>143</sup> 47 C.F.R. § 1.9020(g).

<sup>144</sup> *Id.* § 1.9040(a)(1).

<sup>145</sup> *Id.* § 1.9030(c)(2).

<sup>146</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17521, ¶ 33.

<sup>147</sup> 47 C.F.R. §§ 20.3, 20.9. As discussed herein, PMRS licensees are not subject to common carrier obligations applicable to CMRS licensees under the Act.

this proposal, managed access providers will not need to file a separate application to request PMRS treatment following approval or acceptance of the lease. The PMRS presumption will apply to all leases of spectrum used exclusively in managed access systems in correctional facilities, and will be reflected upon the approval or acceptance of the lease. This proposal is not intended to restrict a lessee's flexibility to operate within a chosen regulatory status for which the system qualifies. Therefore, a managed access lessee would retain the option of applying for CMRS status by including an exhibit to Form 608 demonstrating that the service meets the CMRS definition or is the functional equivalent of CMRS.<sup>148</sup> We seek comment on these proposals, and on any costs or benefits they may impose.

46. We also seek comment on whether we should apply the Commission's 911 and enhanced 911 (E911) rules to managed access services that provide access to 911 and E911.<sup>149</sup> As a technical matter, managed access systems can be configured to pass 911 and E911 calls to the appropriate public safety answering point, regardless of whether the call is made from an unauthorized device.<sup>150</sup> Although managed access services ordinarily qualify as PMRS, and therefore are not subject to the Commission's 911 and E911 rules,<sup>151</sup> we seek comment on whether there are potential benefits to applying some or all of the Commission's 911 or E911 rules to a managed access provider operating as a PMRS that transmits 911 or E911 calls on its system.<sup>152</sup> We also seek comment on any associated costs or burdens that would be created by such a requirement.

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

47. In the *Second Secondary Market Report and Order* the Commission exercised forbearance in order to immediately process, without public notice or prior Commission review or consent, *de facto* leases that met eligibility and use restrictions but not did require a waiver or declaratory ruling and did not raise issues regarding competition, designated entity or entrepreneurship restrictions, or other public interest concerns.<sup>153</sup> We propose to extend that forbearance in order to immediately process *de facto* leases for managed access systems in correctional facilities that do not raise concerns with use and

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<sup>148</sup> The lessee can continue to utilize the existing mechanism in the Commission's rules for rebutting the presumption that a mobile service does not meet the CMRS definition through a petition for declaratory ruling. 47 C.F.R. § 20.9(a)(ii).

<sup>149</sup> See 47 C.F.R. § 20.18.

<sup>150</sup> See NTIA Report at 21-22; MDOC Petition at 7; AT&T NTIA NOI Comments at 11; Sprint Nextel NTIA NOI Comments at 1; Tecore NTIA NOI Comments at 11; T-Mobile NTIA NOI Comments at 8; Verizon Wireless NTIA NOI Comments at 10. *But see* Enterprise Electronics NTIA NOI Comments at 5 (arguing that despite the ability of managed access systems to provide 911 and E911 access to contraband devices, inmates will abuse the service and should not be granted access).

<sup>151</sup> Section 20.18 of the Commission's rules applies to CMRS providers that "[o]ffer real-time, two way switched voice service that is interconnected with the public switched network; and [u]tilize an in-network switching facility that enables the provider to reuse frequencies to accomplish seamless hand-offs of subscriber calls." 47 C.F.R. § 20.18(a). The Commission's spectrum leasing rules impose varying E911 obligations for the licensee and lessee depending on the type of lease. In long-term *de facto* lease arrangements, the lessee is required to meet the Commission's E911 requirements to the same extent that the licensee is, "insofar as the spectrum lessee's operations are encompassed within the E911 obligations." *Id.* § 1.9030(d)(8). In spectrum manager leases, the licensee retains any E911 obligations that apply to the leased spectrum. *Id.* § 1.9020(d)(8). In short-term *de facto* leases, the licensee retains any E911 obligations with respect to the leased spectrum, and the lessee is not required to comply with any E911 obligations. *Id.* § 1.9035(d)(4).

<sup>152</sup> See *id.* § 20.18.

<sup>153</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512-13, 17521-23, ¶¶ 15, 34-37.

eligibility restrictions, that do not require a waiver or declaratory ruling with respect to a Commission rule, but that do involve leases of spectrum in the same geographic area or involve designated entity rules, affiliation restrictions, unjust enrichment prohibitions, and transfer restrictions. Specifically, we propose to forbear from the applicable prior public notice requirements and individualized review requirements of Sections 308, 309, and 310(d) of the Act.<sup>154</sup>

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

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>155</sup>

In the *Second Secondary Market Report and Order* the Commission found that the forbearance prongs were met for *de facto* leases that did not raise concerns with eligibility and use restrictions, foreign ownership restrictions, designated entity or entrepreneur restrictions, competition concerns, or other public interest concerns.<sup>156</sup> The Commission based its decision on its finding that even lease applications that were not immediately processed were not reviewed for the impact on the practices or charges of the providers, and therefore forbearance would have no impact on practices or charges.<sup>157</sup> Further, it found that a more thorough application review for leases qualifying for immediate approval was not necessary to protect consumers because the Commission had concluded that it would only immediately approve applications that did not raise public interest concerns.<sup>158</sup> Finally, the Commission concluded that forbearance from public notice and individualized Commission review were in the public interest because leases that did not raise public interest concerns would be approved quickly, reducing transaction costs, speeding time to market of services, improving spectrum access and efficiency, and increasing consumers' access to advanced wireless services.<sup>159</sup>

49. We seek comment on whether the statutory forbearance requirements are met for our proposal to forbear from applying the individualized review and public notice provisions of Section 308, 309, and 310(d) of the Act for *de facto* managed access leases that do not raise concerns with eligibility and use restrictions or foreign ownership restrictions, and that do not require a waiver or declaratory ruling with respect to a Commission rule. For the reasons discussed in the *Second Secondary Market Report and Order*, we believe that managed access leases also generally qualify for the forbearance granted to all *de facto* leases.<sup>160</sup> Further, we believe that the statutory forbearance requirements are met for *de facto* managed access leases that comply with the necessary immediate approval procedures in our rules, but also involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment

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<sup>154</sup> 47 U.S.C. §§ 308, 309, 310(d).

<sup>155</sup> 47 U.S.C. § 160(a).

<sup>156</sup> *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512-13, ¶ 15.

<sup>157</sup> *Id.* at 17522, ¶ 35.

<sup>158</sup> *Id.* at 17522-23, ¶ 36.

<sup>159</sup> *Id.* at 17523, ¶ 37.

<sup>160</sup> *Id.* at 17522-23, ¶¶ 35-37.



provisions and transfer restrictions. As described *supra*, these systems necessarily require overlapping spectrum in the same geographic area and likely do not run counter to the intent and purpose behind our rules governing unjust enrichment or transfer restrictions.<sup>161</sup> We believe there is an overriding public interest in preventing prisoners from using wireless devices to further a criminal enterprise from within correctional facilities, which necessitates a streamlined application review process for spectrum leases for managed access systems in correctional facilities. We seek comment on this analysis.

#### iv. Streamlined Special Temporary Authority Request Processing

50. Finally, we propose to streamline the process for a managed access provider to obtain STA to operate a managed access system in a correctional facility prior to obtaining a more permanent authorization. We propose to exempt managed access providers seeking STAs for a managed access system in correctional facilities from the requirement that they file the STA application ten days prior to operation.<sup>162</sup> We also propose to process STA requests for managed access systems in correctional facilities without prior public notice. Further, we propose to make changes to ULS to electronically process STA applications for market based licenses, such as PCS. Under this process, applicants would still be required to meet all of the existing requirements to be granted STA.<sup>163</sup> Additionally, applicants would be required to attach an exhibit to the application explaining the nature of the managed access system, including the location of the correctional facility, the applicant's relationship to the correctional facility, and the exact coordinates of the spectrum boundaries.<sup>164</sup> We also propose to modify FCC Form 601, which is used to apply for STAs, to allow an applicant to identify that the application is being filed for a managed access system in a correctional facility. This will allow the application to be removed from ordinary processing and entered into expedited processing.

51. We seek comment on the extent to which the expedited STA process proposed above will facilitate the deployment of managed access systems. In light of our proposals to expedite processing and approval for qualifying managed access leases, we do not anticipate that managed access providers will ordinarily require STAs prior to the grant of a lease application or acceptance of a lease notification. However, to the extent a managed access operator needs to test the system or operate on an emergency basis prior to obtaining approval or acceptance of a lease, this proposed streamlined process may serve to expedite the entire deployment timeframe. We seek comment on this analysis and proposal, and any costs it may impose or benefits it may generate.

### 3. Other Proposals

52. GTL and MDOC separately filed petitions for rulemaking seeking various rule changes to expedite the deployment of managed access systems,<sup>165</sup> and Tecore filed comments in another proceeding

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<sup>161</sup> See *supra* Part III.A.2.i.

<sup>162</sup> See *id.* § 1.931(a).

<sup>163</sup> See *id.* (establishing that applications “must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA”).

<sup>164</sup> We propose to require that applicants for immediate lease application approval or notification processing include the same exhibit in the lease application or notification. See *supra* Part III.A.2.i.

<sup>165</sup> See generally GTL Petition; MDOC Petition. GTL proposes rule changes that would expedite the lease negotiation process, impose network upgrade notification obligations on licensees, set limits on the amount of “over-coverage” by managed access systems, and protect E911 in areas where managed access systems operate. GTL Petition at 9. MDOC seeks rule changes to allow state and local government entities to obtain site-based licenses for managed access systems on a coordinated secondary basis to licensee use of the licensed spectrum. MDOC Petition at 11.

outlining several rule and procedural changes it also believes are necessary to expedite managed access lease processing and system deployment.<sup>166</sup> We seek comment generally on these proposals and the extent to which they may be incorporated into the lease processing and approval proposals outlined above.<sup>167</sup>

## B. Detection

### 1. Overview and Regulatory Environment for Detection Systems

53. In addition to our proposals regarding streamlining the lease application process for managed access systems, we also seek comment on proposals to facilitate the deployment of detection systems. Detection systems are another method used by correctional facility administrators or operators to meet the joint objectives of discovering and disabling contraband wireless devices without interfering with legitimate wireless users.<sup>168</sup> Detection systems generally identify the location of a contraband wireless device through triangulation,<sup>169</sup> and can be accurate to within a few meters.<sup>170</sup> The systems are highly scalable – they can expand coverage with new sensors, and can detect signals across many frequency bands.<sup>171</sup> Detection system operators do not require a FCC license or FCC authorization.<sup>172</sup> As detection systems are passive and can only approximate the location of a contraband device, correctional facility employees must search for and physically confiscate the identified contraband device to terminate operations.<sup>173</sup> This potentially increases the cost and reduces the effectiveness of these systems and unnecessarily threatens the safety of correctional facility workers.<sup>174</sup>

54. In September 2011, CellAntenna filed a petition for rulemaking requesting rule changes that would require wireless carriers to terminate service to unauthorized wireless devices operating in correctional facilities discovered by a detection system.<sup>175</sup> CellAntenna argues that detection systems are superior to managed access and jamming systems because detection systems do not threaten to cause

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<sup>166</sup> See generally Tecore Wireless Service Interruption Comments. Tecore urges the Commission to make rule changes to create a scheme that would authorize the installation of a managed access system either by a relevant licensee or through a spectrum lease with a relevant state or local agency or designated third party. *Id.* at 46-50.

<sup>167</sup> We note that we will incorporate these petitions into the record established pursuant to this *Notice* through GN Docket No. 13-111.

<sup>168</sup> See CTIA NTIA NOI Comments at 17; ITT NTIA NOI Comments at 3; Sprint NTIA NOI Comments at 2; T-Mobile NTIA NOI Comments at 9-10.

<sup>169</sup> See NTIA Report at 27; BINJ NTIA NOI Comments at 7; Enterprise Electronics NTIA NOI Comments at 8.

<sup>170</sup> See ITT NTIA NOI Comments at 18; NTIA Report at 29.

<sup>171</sup> See ITT NTIA NOI Comments at 8; BINJ NTIA NOI Comments at 4; Berkley Varitronics NTIA NOI Comments at 5.

<sup>172</sup> See NTIA Report at 30. The equipment itself, however, may need Commission certification before it can be marketed and sold. See 47 C.F.R. § 15.101(a) (listing unintentional radiators as equipment that shall be authorized under the Commission's rules, including several types of receivers).

<sup>173</sup> See CellAntenna 2011 Petition at 7 (“[T]he ensuing physical searches are time (and resource) consuming and can be dangerous for correctional personnel.”); ITT NTIA NOI Comments at 5 (“The drawback to detection is that someone has to take an action to retrieve the phone.”).

<sup>174</sup> CellAntenna 2011 Petition at 7; GTL NTIA NOI Comments at 3-4; ITT NTIA NOI Comments at 5. Even if identified contraband devices are not confiscated, however, detection systems are capable of gathering a large amount of data about contraband wireless devices, including the number of transmissions, the times of day they are used, and the length of use. See BINJ NTIA NOI Comments at 7; CTIA NTIA NOI Comments at 14.

<sup>175</sup> See CellAntenna 2011 Petition at 7-8.

interference with carrier networks.<sup>176</sup> CellAntenna also believes its proposal will remedy the need to physically confiscate contraband wireless devices, a clear drawback of current detection systems.<sup>177</sup> CellAntenna proposes a three step plan. First, the correctional facility identifies unauthorized wireless devices within the facility; second, the warden transmits the identifying information of the contraband device to the appropriate CMRS provider via email or fax; and third, the CMRS provider sends a SMS message to the unauthorized device notifying the user that the device is unauthorized and suspends service to the device within one hour of receiving notice from the warden.<sup>178</sup>

55. CellAntenna also proposes a new rule to hold harmless CMRS providers from violation of a law or regulation when the provider terminates service to a device if the provider acted in good faith to terminate service in reliance on a warden's notice and took immediate action to reinstate suspended service if "presented with compelling evidence contradicting the Warden's notice."<sup>179</sup> As discussed below, we seek comment on CellAntenna's proposal, including any costs or benefits of the proposal.

## 2. Disabling Contraband Wireless Devices through Improved Coordination

56. Consistent with CellAntenna's proposal, we propose to require CMRS licensees to terminate<sup>180</sup> service to contraband devices within correctional facilities pursuant to a qualifying request from an authorized party. We seek comment on the costs and benefits of this proposal.

57. We note the nexus between this proposal and the wireless industry's recent voluntary commitment to take steps to help deter smartphone thefts and protect consumer data.<sup>181</sup> Under the commitment, participating wireless providers will work to implement and deploy database solutions using unique smartphone identification numbers to prevent stolen smartphones from being activated or from receiving service.<sup>182</sup> The commitment represents a significant recognition of the public interest benefits of deterring unauthorized use of wireless devices and the feasibility of a technological solution that can uniquely identify a stolen device and terminate service to the device.<sup>183</sup>

58. Similar technological solutions could be used to combat the serious problem of contraband wireless device use in correctional facilities, for example by enhancing the effectiveness of detection technologies through CMRS provider termination of service to identified contraband devices. Detection systems arguably have the least impact on legitimate wireless users relative to other technical approaches to

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<sup>176</sup> *Id.* at 6-7.

<sup>177</sup> *Id.* at 6-9.

<sup>178</sup> *Id.* at 8.

<sup>179</sup> *Id.* at 10.

<sup>180</sup> CellAntenna refers to the "suspension" of service under its proposal. *Id.* at 8.

<sup>181</sup> See CTIA Consumer Info, U.S. Wireless Industry Steps to Help Deter Smartphone Thefts and Protect Consumer Data (Wireless Industry Commitment), available at [http://www.ctia.org/consumer\\_info/safety/index.cfm/AID/12084](http://www.ctia.org/consumer_info/safety/index.cfm/AID/12084).

<sup>182</sup> *Id.* As announced, the commitment only applies to GSM and LTE smartphones. See *id.*

<sup>183</sup> See *id.* Chairman Genachowski, in remarks delivered at a press conference announcing the initiative, noted that similar database solutions were operating in the United Kingdom and other countries. See Julius Genachowski, Chairman, FCC, Prepared Remarks on Stolen Cell Phones Initiative (Apr. 10, 2012), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-313512A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313512A1.pdf).

combating contraband wireless device use in correctional facilities,<sup>184</sup> but their overall effectiveness is limited by the inability of the system operator to terminate service to detected devices. Detection-based interdiction technology is more effective when combined with carrier termination of service to identified contraband devices by all CMRS providers covering a given correctional facility. If a single CMRS provider whose coverage area includes a correctional facility does not terminate service to contraband devices identified in the facility, the demand for contraband devices that can receive service from that provider will likely dramatically increase. When all CMRS providers terminate service to unauthorized devices pursuant to authenticated requests, detection systems can transform from a solution that can only identify wireless devices to a powerful solution that can lead to the termination of service without physical intervention, and without a significant impact on legitimate wireless users. We seek comment on this analysis. We also seek comment on the possible effectiveness of voluntary carrier participation in an industry wide effort to terminate service to contraband wireless devices.

59. In addition to the proposals to facilitate managed access or detection systems discussed above, we also propose to adopt several elements of the CellAntenna proposal to require CMRS providers to terminate service to identified contraband wireless devices. We seek comment below on the specific information that the correctional facility must transmit to the provider to effectuate termination, timing for carrier termination, methods of authenticating a termination request, and other issues. We also seek comment on the costs and benefits on each of the proposals discussed below.<sup>185</sup> In particular, we seek comment on the specific cost burdens that a carrier would face in establishing the reporting mechanisms, technical upgrades, if any, operational enhancements, and personnel training necessary to handle requests for termination. In addition, to the extent that carriers incur such costs to support requests for termination, we seek comment on mechanisms by which carriers could recoup the initial and ongoing expense of complying with a requirement to terminate service to contraband devices, including cost sharing mechanisms with correctional facilities.

60. We believe the Commission has authority under Section 303 to require CMRS providers to terminate service to contraband wireless devices.<sup>186</sup> Under Section 303(b), the Commission is required to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”<sup>187</sup> Additionally, Section 303(d) requires the Commission to “[d]etermine the location of classes of stations or individual stations,”<sup>188</sup> and Section 303(h) grants the Commission the “authority to establish areas or zones to be served by any station.”<sup>189</sup> When tied together with Section 303(r), which requires the Commission to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter,”<sup>190</sup> and Section 4(i), which authorizes the Commission to “perform any and all acts, make such rules and

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<sup>184</sup> Wireless detection systems do not transmit radio frequencies and therefore do not pose a risk of interference to other wireless users. NTIA Report at 28; CellAntenna 2011 Petition at 6-7.

<sup>185</sup> As established in the previous Part, when we seek comment on a proposal, we ask commenters to take into account the costs and benefits that flow directly from the particular rules or proposals, including potential alternative requirements. We further ask commenters to be specific, to the extent possible, by including estimated dollar figures or any other supporting documentation or evidentiary support. *See supra* ¶ 25.

<sup>186</sup> *See* 47 U.S.C. § 303.

<sup>187</sup> 47 U.S.C. § 303(b). *See also Cellco Partnership v. FCC*, 700 F.3d 534, 542-43 (D. C. Cir. 2012) (upholding Commission’s roaming rules for mobile data providers, broadly reading phrase “prescribe the nature of the service to be rendered” to mean “lay[ ] down a rule about ‘the nature of the service to be rendered’”).

<sup>188</sup> 47 U.S.C. § 303(d).

<sup>189</sup> *Id.* § 303(h).

<sup>190</sup> *Id.* § 303(r).

regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions,”<sup>191</sup> we believe that these provisions empower the Commission to implement this proposal. We seek comment on this analysis.

**i. Identifying Contraband Devices**

61. We seek to ensure that service is terminated only to contraband devices operated within a correctional facility and not lawful subscriber devices possibly operating in close proximity to a correctional facility. Existing detection technologies are reportedly capable of accurately identifying the location of unauthorized wireless devices in a correctional facility within several meters,<sup>192</sup> with reportedly little or no risk of identifying legitimate wireless devices outside of the facility.<sup>193</sup> Each sensor in a detection system can be physically positioned to detect wireless transmissions within a certain path, and can determine the approximate distance between the sensor and the detected device.<sup>194</sup> The unknown location of the contraband device is determined by “measuring the distances from the point of [the] unknown location . . . to three or more points of known location.”<sup>195</sup> Detection providers can increase accuracy by positioning multiple sensors with overlapping zones of detection.<sup>196</sup> Software analyzes the data from the sensors to generate coordinates used to identify the approximate location of the device, which can then be displayed using a geographic information system depicting the location of the device on a floor plan or some other map of the facility.<sup>197</sup>

62. Detection systems can reportedly identify wireless devices in various states of use, including when a wireless device places or receives a call, sends or receives a text message, or sends or retrieves data.<sup>198</sup> When a device attempts to connect to the network, CellAntenna asserts that detection systems can identify specific information about the device, including the service provider, electronic serial number (ESN), mobile identification number (MIN), international mobile equipment identifier (IMEI), or the international mobile subscriber identity (IMSI).<sup>199</sup> According to CellAntenna, when this unique identifying information is transmitted to the device’s CMRS provider, the CMRS provider could identify the device in its systems by its ESN, MIN, IMEI, or IMSI and terminate service to the device.<sup>200</sup> We seek comment on this technical analysis and on any safeguards that may be necessary to protect against the unlikely event that an authorized device outside of the correctional facility is detected. We also seek comment on the costs and benefits of any proposed safeguards.

63. While the Commission does not directly license the operation of detection systems, we seek comment on the appropriate criteria that must be met by an entity requesting that a carrier terminate service to a contraband device in a correctional facility identified by a detection system. In its petition,

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<sup>191</sup> *Id.* § 154(i).

<sup>192</sup> *See* ITT NTIA NOI Comments at 18; NTIA Report at 29.

<sup>193</sup> BINJ NTIA NOI Comments at 2 (“Cell phone detection systems do not pose a threat to legitimate cell phone use by the general public outside the prison.”).

<sup>194</sup> *See* Enterprise Electronics NTIA NOI Comments at 10.

<sup>195</sup> TruePosition NTIA NOI Comments at 2.

<sup>196</sup> *See* NTIA Report at 29.

<sup>197</sup> *See* Enterprise Electronics NTIA NOI Comments at 8; BINJ NTIA NOI Comments at 2.

<sup>198</sup> *See* BINJ NTIA NOI Comments at 8; Enterprise Electronics NTIA NOI Comments at 7-8.

<sup>199</sup> CellAntenna 2011 Petition at 7.

<sup>200</sup> *See id.*

CellAntenna proposes that the Commission provide generally that if a CMRS carrier receives notice from a correctional facility official that a “wireless device is operating within the confines of the correctional facility, it shall suspend service to the identified device.”<sup>201</sup>

64. We note that CellAntenna does not directly propose that a suspension request be limited to information acquired only from passive detection-based systems, but CellAntenna’s petition appears to be premised upon use of its detection technology to capture the information necessary to request wireless provider action.<sup>202</sup> In the interest of technological neutrality, we seek comment on whether contraband wireless devices identified by CellAntenna’s technology and other technologies, including managed access systems discussed herein, have the requisite characteristics, including accuracy, to identify contraband wireless devices for purposes of service termination while avoiding incorrect identification of legitimate devices. Should the Commission establish minimum performance standards for detection systems that must be met in order for the system operator to transmit a request to a carrier to terminate service to an identified contraband device? Should the standards be based on a measure of accuracy in terms of identifying only unauthorized contraband devices within a correctional facility? If so, should the measure of accuracy be dependent on the location of the facility, *e.g.* urban versus rural? How would we verify that an entity meets such a standard? Should the Commission set such a standard or encourage carriers, detection equipment manufacturers or operators, and correctional facility officials to establish voluntary standards? Is there a threshold beyond which gains in accuracy are disproportional to the cost of achieving increased accuracy? Alternatively, to the extent that detection equipment requires FCC certification, the Commission could impose technical accuracy standards through the equipment certification process.<sup>203</sup> We seek comment on these alternatives, and on the costs and benefits of these alternatives.

## ii. Requesting Termination of Service to Contraband Devices

65. Under our proposal, after the detection system identifies a contraband device, an authorized correctional facility official would be permitted to request termination of service to the device by the CMRS provider after providing relevant information. In its petition, CellAntenna proposes that the Commission permit a warden to transmit termination requests (or a Notice of Contraband Wireless Device) via email or fax.<sup>204</sup> We seek comment on this proposal. Would correctional facilities have greater operational flexibility if an authorized agent were able to make the formal termination request? What criteria should be used to determine the correctional facility personnel that should be authorized to make a termination request? Would such criteria be an adequate safeguard against the transmission of inaccurate information to a carrier?

66. CellAntenna proposes that the Commission require the warden to include the ESN, MIN, IMEI, or IMSI in a notice to terminate service to identified wireless devices sent to a carrier.<sup>205</sup> Do different carriers and different wireless technologies require different information to identify and terminate service to a device? Do resellers of wireless service require different or additional information to identify and terminate

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<sup>201</sup> *Id.* at 10.

<sup>202</sup> *Id.* at 10-11.

<sup>203</sup> 47 U.S.C. § 302a(a) (“The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means . . . .”); 47 C.F.R. § 2.803(a) (establishing that except as provided elsewhere in the Commission’s rules, “no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device” unless it has been authorized or otherwise meets Commission rules).

<sup>204</sup> CellAntenna 2011 Petition at 8.

<sup>205</sup> *Id.* at 10.

service to a wireless device? Must resellers take additional steps to terminate service? Do the requirements differ for small wireless providers relative to large wireless providers? Are all types of detection equipment and detection systems capable of capturing the identical suite of information?

67. We also seek comment on any other electronic or other means in addition to email and fax that would be an acceptable way for a correctional facility to transmit a termination request, including through an automated system. Should we require an email or fax to be on a specific form that would include certain information, in addition to the necessary identification information of the contraband wireless device, to help ensure authenticity and accuracy of the request? Or is it sufficient for the correctional facility to transmit a list of the necessary identifying information of all contraband devices, along with some type of authentication such as an official signature? What costs are associated with establishing a transmission mechanism, in particular any secure facilities required for transmission, and who should bear the cost of setting them up and maintaining them?

68. Detection systems can operate continuously, detecting contraband devices regardless of the time of day.<sup>206</sup> We seek to provide flexibility to detection or related technology providers, correctional facilities, and carriers to develop systems that most effectively and efficiently terminate service to contraband wireless devices. With that in mind, we recognize that multiple termination requests may be received any hour of the day. We seek comment on estimates of the costs if the proposals outlined herein were adopted. Should we establish set intervals or times at which a correctional facility or detection provider can transmit batch termination requests to a carrier? Is it relevant if both the carrier and correctional facility have automated systems for requesting termination and terminating service to contraband wireless devices? What is the appropriate balance between a correctional facility's need to have contraband service terminated promptly and a wireless provider's interest in ensuring that the request is authenticated and accurate in order to prevent wrongful service termination? Are there specific issues we should consider with respect to processing termination requests by small or rural CMRS providers? What role could the database being developed by the wireless industry to identify and terminate service to stolen smartphones play in this process?<sup>207</sup> Could participating wireless providers reduce implementation costs by relying on existing technologies and processes?

69. Correctional facility officials need to be able to timely transmit the termination requests to a carrier representative that is authorized to terminate the service or to an automated system that is designed to handle and process such requests. As with the correctional facility operator's need to ensure the termination request is accurate, the carrier needs to ensure that it terminates service only to the identified contraband devices. Should we require carriers to identify an authorized individual or individuals to whom all termination requests should be submitted? Is there a specific operational unit within a carrier to which all termination requests should be routed? We seek comment on ways that a correctional facility with a detection system will be able to identify the appropriate individual or group within a carrier to transmit termination requests. Alternatively, is there a common interface that could be used to automate the transmission and processing of the termination request?<sup>208</sup> We also seek comment on the best means for a carrier to acknowledge receipt of a termination request. Should the carrier be required to confirm receipt of a termination request through the same means they received the request? Are there specific statements or information – such as the time received or the agent that received the request – that must be included in a

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<sup>206</sup> ITT NTIA NOI Comments at 5.

<sup>207</sup> See Wireless Industry Commitment.

<sup>208</sup> To the extent that a commenter proposes an existing technology or technology in development to automate this process, we seek specific information on the system design, operation, effectiveness, cost, and any other relevant information.

confirmation of receipt of a termination request? Could confirmation that termination occurred within any set timeframe be sufficient? Finally, we seek comment on any other possible requirements to ensure that termination requests are accurately transmitted, received, and confirmed, including the cost and benefits of any possible requirement.

### iii. Action by CMRS Licensees

70. Action by a CMRS provider to terminate service to a contraband wireless device is the primary component of this proposal. As noted, we seek comment generally on the costs and benefits of such an approach. We also seek comment on whether small or rural CMRS providers would be disproportionately affected by this requirement. As discussed in detail below, we seek comment on the processes that a carrier might need to implement to terminate service to unauthorized devices, and on the costs associated with implementing such processes.

71. We recognize the need for adequate safeguards in this process to ensure that legitimate wireless devices are not misidentified and that legitimate wireless users do not have their service terminated through, for example, clerical error. We therefore generally seek comment on the costs for a carrier, correctional facility, or third party detection provider to implement procedures and technologies to ensure that disruption of service to legitimate wireless users is minimized or prevented. In its petition, CellAntenna proposes a rule change that would effectively insulate a carrier from any legal liability for violation of any law or regulation for terminating service to an identified unauthorized device so long as “its action to suspend service was taken in good faith reliance on a Warden’s notice; and if presented with compelling evidence contradicting the Warden’s notice, the Carrier took immediate action to reinstate the suspended service.”<sup>209</sup> We seek comment on this proposal, including whether such a rule is necessary and the specific impact on carriers in the absence of such a rule. We note that that wireless carriers currently have substantial flexibility regarding the terms and conditions in their end user licensing agreements and that such agreements may already include a provision reserving the right to suspend or terminate service for use that violates government rules or the right to terminate service for a governmental reason.<sup>210</sup>

72. CellAntenna’s proposal would further require carriers to “send a warning to the identified contraband device by [SMS] that the device is operating illegally.”<sup>211</sup> We seek comment on this proposal and whether there are alternative intermediate steps that are necessary to provide notice to a device user that service is being terminated to the device. If we require the carrier to send a SMS message as CellAntenna proposes, would it be necessary or feasible to provide a vehicle through which the user of the alleged contraband device could demonstrate that the pending termination is in error? For example, the text message could include a phone number that the end user could call to prevent the mistaken termination of the service. Are there other intermediary steps a carrier could take to attempt to confirm that service is being terminated to a contraband device and not a legal device? Are there any costs associated with sending such notification and, if so, who should bear them?

73. CellAntenna proposes to require the carrier to suspend service to the device within one hour after receipt of notification.<sup>212</sup> We recognize that prompt action to terminate service to a contraband device is

<sup>209</sup> CellAntenna 2011 Petition at 10.

<sup>210</sup> See, e.g., My Verizon Wireless Customer Agreement, available at <http://www.verizonwireless.com/b2c/support/customer-agreement> (updated Feb. 19, 2012) (explaining that it can “temporarily limit [the customer’s] Service for any operational or governmental reason” and that it may limit, suspend, or end service for a use that violates “prohibitions promulgated by any U.S. governmental agency”).

<sup>211</sup> CellAntenna 2011 Petition at 8.

<sup>212</sup> *Id.*



important, because any delay leaves that device in the hands of a prisoner who may utilize the device for criminal purposes, and it may continue to pose a threat to correctional facility staff, other prisoners, and the general public.<sup>213</sup> However, a more lengthy time interval may be needed between the identification of a contraband device and the termination of service to that device.<sup>214</sup> We seek comment on what interval is appropriate. Would some carriers, for example small or rural providers, require additional time relative to larger carriers? Does the time period affect the cost of compliance with these proposals?

**C. Applicability of Prohibitions on Intercepting and Publishing Communications and on the Use of Pen Register and Trap and Trace Devices**

74. *Background.* Section 705 of the Act generally prohibits, except as authorized under Chapter 119, Title 18 of the U.S. Code, any person “receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio” from divulging or publishing the “existence, contents, substance, purport, effect or meaning thereof” to another person other than through authorized channels.<sup>215</sup> Additionally, Chapter 206, Title 18 of the U.S. Code generally prohibits the use of pen register and trap and trace devices without a court order,<sup>216</sup> subject to several exceptions including where a provider of a communications service obtains the consent of the user.<sup>217</sup>

75. *Discussion.* We seek comment on the extent to which providers or operators of managed access or detection systems comply with Section 705 if they divulge or publish the existence of a communication for the purpose of operating the system, and whether such providers or operators are entitled to receive communications under Section 705.

76. As described in this *Notice*, managed access and detection systems work by electronically identifying contraband devices and terminating or blocking service to or from such devices.<sup>218</sup> We seek comment on whether any of the proposals regarding detection and managed access systems would implicate the pen registers and trap and trace devices chapter of Title 18 of the U.S. Code.<sup>219</sup> To the extent that a proposal would implicate that chapter, could the consent exception<sup>220</sup> nevertheless permit operation of a device?

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<sup>213</sup> See *supra* Part II.A.

<sup>214</sup> See CellAntenna 2011 Petition at 8.

<sup>215</sup> 47 U.S.C. § 605(a). Further, it provides as relevant herein: “No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. . . .” *Id.*

<sup>216</sup> 18 U.S.C. §§ 3121-3127. A pen register is a device or process that “records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted.” *Id.* § 3127(3). A trap and trace device is a device or process that captures an incoming electronic impulse that identifies the “originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication.” *Id.* § 3127(4). As defined, neither a pen register nor trap and trace device captures the contents of any communication. *Id.* § 3127(3)-(4).

<sup>217</sup> *Id.* § 3121(b)(3).

<sup>218</sup> We note, however, that these systems could be used to facilitate wiretaps. See CTIA NTIA NOI Comments at 12; Tecore NTIA NOI Comments at 14; T-Mobile NTIA NOI Comments at 8-9.

<sup>219</sup> See 18 U.S.C. §§ 3121-3127.

<sup>220</sup> See *id.* § 3121(b)(3).

#### D. Other Technological Solutions

77. Although we do not propose any measures beyond those designed to facilitate the use and improve the efficacy of managed access and detection systems for addressing the problem of contraband wireless devices in correctional facilities, we invite comment on other technological solutions, whether discussed in previously filed documents summarized herein, or set out in comments filed in response to this *Notice*. Commenters proposing alternative solutions not described in this *Notice* should provide specific descriptions of any technology currently available or in development that may be used to combat contraband wireless devices, and how these technologies differ from those described herein. For any alternative solution, commenters should also address whether their proposed technology requires Commission approval or authorization, specifically identify any Commission rules or processes they believe may hinder the development or deployment of such technology, explain the source of the Commission's authority for authorizing such solution, and discuss whether there are any statutory bars or impediments – most significantly Section 333's sweeping prohibition against interference – that would preclude use of the technology or render it infeasible.<sup>221</sup> Finally, commenters should identify the costs and benefits of any proposed rule or process changes.

### IV. PROCEDURAL MATTERS

#### A. *Ex Parte* Rules

78. The proceeding this *Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>222</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### B. Filing Requirements

79. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the

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<sup>221</sup> See 47 U.S.C. § 333 ("No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.").

<sup>222</sup> 47 C.F.R. §§ 1.1200 *et seq.*

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Commenting parties may file comments in response to this *Notice* in GN Docket No. 13-111; interested parties are not required to file duplicate copies in the additional dockets listed in the caption of this *Notice*.
- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Note that while multiple dockets are listed in the caption of this *Notice*, commenters are only required to file copies in GN Docket No. 13-111.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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

### C. Initial Paperwork Reduction Act Analysis

80. This *Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and Office of Management and Budget to comment on the information collection requirements contained in this document, as required by Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520) (PRA). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."<sup>223</sup>

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<sup>223</sup> 44 U.S.C. § 3506(c)(4).

**D. Initial Regulatory Flexibility Analysis**

81. As required by the Regulatory Flexibility Act of 1980,<sup>224</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Notice*. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *Notice* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**V. ORDERING CLAUSES**

82. Accordingly, IT IS ORDERED, that pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332 this Notice of Proposed Rulemaking IS ADOPTED.

83. IT IS FURTHER ORDERED that, pursuant to Sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303, and Sections 1.2 and 1.407 of the Commission's Rules, 47 C.F.R. §§ 1.2, 1.407, the petitions listed in the caption of this proceeding are GRANTED to the extent indicated herein, and otherwise DENIED.

84. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, 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

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<sup>224</sup> See 5 U.S.C. § 603.

## APPENDIX A

## Proposed rules

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

## PART 1—Practice and Procedure

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

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

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

§ 1.931 Application for special temporary authority.

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

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

\* \* \* \* \*

(v) The STA is for operation of a station used in a managed access system, as defined in part 1.9003 of this chapter (47 CFR 1.9003).

3. Section 1.9003 is amended by inserting the following after the paragraph beginning *Long-term de facto transfer leasing arrangement* and before the paragraph beginning *Private commons*:

§ 1.9003 Definitions

\* \* \* \* \*

Managed access system. A managed access system is a system comprised of one or more stations operating under a license, or lease arrangement entered into exclusively for the operation of such system, and is used in a correctional facility exclusively to prevent transmissions to or from unauthorized wireless devices within the boundaries of the facility.

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

§ 1.9020 Spectrum manager leasing arrangements

\* \* \* \* \*

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

(1) \* \* \*

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

(i) \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

(1) \* \* \*

(2) *Immediate processing procedures.* Applications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for managed access systems as defined in section 1.9003 of this chapter that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.

(i) \* \* \*

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

\* \* \* \* \*

## PART 20—Commercial Mobile Radio Services

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

AUTHORITY: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316 and 332 unless otherwise noted.

7. Section 20.9 is amended by revising the introductory language of paragraph (b), and adding paragraph (b)(3), to read as follows:

### § 20.9 Commercial mobile radio service

(a) \* \* \*

\* \* \* \* \*

(b) Except as set forth in paragraph (d) of this section, licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and Automated Maritime Telecommunications System (AMTS) licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

\* \* \* \* \*

(d)(i) A service provided over a managed access system, as defined in section 1.9003 of this chapter (47 CFR 1.9003) is presumed to be a private mobile radio service

(ii) A party providing service over a managed access system, as defined in section 1.9003 of this chapter (47 CFR 1.9003), may seek to overcome the presumption that such service is a private mobile radio service by attaching a certification to a lease application or notification certifying that the mobile service in question meets the definition of commercial mobile radio service, or the mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service. The party may also seek to overcome the presumption through the process set forth in paragraph (a)(14)(ii) of this section.

8. Section 20.22 is added to read as follows:

§ 20.21 Service termination upon notice of an unauthorized user

CMRS providers are required to terminate service to any device identified by a qualifying authority as unauthorized within the confines of a correctional facility.



## APPENDIX B

## Initial Regulatory Flexibility Analysis

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

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

2. The rules proposed in the *Notice of Proposed Rulemaking (Notice)* are necessary to improve the viability of different technologies used to combat contraband wireless devices in correctional facilities. Prisoners can use contraband wireless devices “to arrange the delivery of contraband drugs or other goods, transmit information on prison staff to or from non-inmates, harass witnesses or other individuals, [and] potentially coordinate an escape.”<sup>4</sup> The use of contraband wireless devices by inmates has grown within the U.S. prison system parallel to the growth of wireless device use by the general public.<sup>5</sup> For example, GAO reports that the number of confiscated cell phones has grown from 1,774 in 2008 to 3,684 in 2010.<sup>6</sup> A test of wireless device interdiction technology in two California State prisons detected over 25,000 unauthorized communication attempts over an 11 day period in 2011.<sup>7</sup> Further, an interdiction system permanently installed in a Mississippi correctional facility reportedly blocked 325,000 communications attempts in the first month of operation, and as of February 2012, had blocked over 2 million communications attempts.<sup>8</sup> It is clear that prisoner possession of wireless devices is a serious threat to the safety and welfare of correctional facility employees and the general public.

3. The proposed rules seek to improve the viability of technologies that detect wireless devices in correctional facilities and that can block transmissions to or from unauthorized wireless devices in correctional facilities. First, the Commission proposes to streamline the process for approving or accepting spectrum lease applications or notifications for spectrum leases entered into for managed access

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

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, BUREAU OF PRISONS: IMPROVED EVALUATIONS AND INCREASED COORDINATION COULD IMPROVE CELL PHONE DETECTION, GAO-11-893 at 23 (Sept. 2011) (GAO Report), <http://www.gao.gov/new.items/d11893.pdf>.

<sup>5</sup> See NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, CONTRABAND CELL PHONES IN PRISONS: POSSIBLE WIRELESS TECHNOLOGY SOLUTIONS 1 (Dec. 2010) (NTIA Report), *available at* [http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport\\_december2010.pdf](http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport_december2010.pdf).

<sup>6</sup> GAO Report at 22.

<sup>7</sup> California Department of Corrections and Rehabilitation, Fact Sheet: Contraband Cell Phones in CDCR Prisons and Conservation Camps, at 1 (2012), *available at* <http://www.cdcr.ca.gov/Contraband-CellPhones/docs/Contraband-Cell-Phone-Fact-Sheet-January-2012.pdf>.

<sup>8</sup> Wireless Service Interruptions, GN Docket No. 12-52, Comments of Tecore Networks at 10 (filed Apr. 30, 2012) (Tecore Wireless Service Interruption Comments).

systems used in correctional facilities under its leasing procedures in Part 1 of its rules. Second, the Commission proposes to require commercial mobile radio service (CMRS) providers to terminate service to contraband wireless devices in correctional facilities that have been identified by a detection system. While not proposing any rule or process changes with respect to other possible wireless device interdiction technologies, the Commission does seek comment on other possible solutions.

4. The Commission proposes to process all spectrum leases for managed access systems overnight, with the approval or acceptance posted to the universal licensing system the following business day after filing. The Commission proposes to modify FCC Form 608 to allow lessees of spectrum to identify that the lease is for a managed access system in a correctional facility, and to require managed access lessees to attach a certification to the application explaining the nature of the managed access system, including the location of the correctional facility, the lessee's relationship to the correctional facility, and the exact coordinates of the leased spectrum boundaries. The certification and selection on Form 608 will establish a presumption that the leased spectrum will be used for a managed access system, and the coordinates will establish the geographic boundaries of the lease area. The Commission proposes to forbear from applying Sections 308, 309, and 310(d) to the extent necessary to implement these proposals.

5. Managed access leases are proposed to be processed overnight if the application or notification is sufficiently complete under existing Commission rules, and if the application or notification does not seek a waiver or a declaratory ruling with respect to a Commission rule. Unlike other leases, the Commission proposes to immediately process qualifying leases for managed access systems if they result in the lessee holding or having access to licenses in the same geographic area that could be used to provide an interconnected mobile service. The Commission seeks comment on whether it should require managed access lessees to provide notice to households in the surrounding area that the managed access system will be activated.

6. The Commission proposes to create a presumption that managed access systems are private mobile radio systems (PMRS), which are not subject to common carrier requirements under the Communications Act of 1934, as amended (Act), or the Commission's rules. The Commission also proposes to streamline the process for seeking Special Temporary Authority (STA) for managed access providers by allowing all managed access providers, regardless of the STA filing rules governing the underlying service, to seek and receive STA one day prior to operation.

7. With respect to detection systems, the Commission proposes to require CMRS providers to terminate service to unauthorized wireless devices located in correctional facilities, and identified by a detection or similar system. Currently, detection systems require physical interdiction to disable a found unauthorized wireless device. This proposal would create process through which a correctional facility administrator could transmit identifying information of detected unauthorized wireless devices to the appropriate CMRS provider, who would then terminate service to the device.<sup>9</sup> The Commission seeks comment on the identifying information detections systems can capture, the processes for authenticating a termination request, timing for termination, confirmation of termination, and other related issues.

## **B. Legal Basis**

8. The legal basis for any action that may be taken pursuant to the *Notice* is contained in sections 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

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<sup>9</sup> As used in the *Notice*, a wireless device includes the physical hardware, such as a phone, as well as components of the hardware, such as subscriber identification module (SIM).

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

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>12</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>13</sup>

10. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>14</sup>

11. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>15</sup> According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.<sup>16</sup> Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.<sup>17</sup> Thus, under this size standard, the majority of firms can be considered small.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>18</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>19</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>20</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

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<sup>10</sup> See 5 U.S.C. § 603(b)(3).

<sup>11</sup> See 5 U.S.C. § 601(6).

<sup>12</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>13</sup> See 15 U.S.C. § 632.

<sup>14</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advo/stats/sbfaq.pdf> (accessed Dec. 2010).

<sup>15</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>16</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

<sup>17</sup> See *id.*

<sup>18</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>19</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>20</sup> See *id.*

13. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>21</sup> According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>22</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>23</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

14. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>24</sup> According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>25</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>26</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the *Notice*.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>28</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>29</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Notice*.

16. *800 and 800-Like Service Subscribers.*<sup>30</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>32</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>33</sup> We do not have data specifying the number of these subscribers that are not independently

<sup>21</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>22</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>23</sup> See *id.*

<sup>24</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>25</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>26</sup> See *id.*

<sup>27</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>28</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>29</sup> See *id.*

<sup>30</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>31</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>32</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>33</sup> See *id.*

owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

17. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>34</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>35</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>36</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>37</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.<sup>38</sup> Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>39</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>40</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Broadband Personal Communications Service*. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>41</sup> For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>42</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>43</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified

<sup>34</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>35</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>37</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>38</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>39</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>40</sup> See *id.*

<sup>41</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

<sup>42</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

<sup>43</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>44</sup> In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.<sup>45</sup> There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.<sup>46</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.<sup>47</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.<sup>48</sup> Of the 14 winning bidders, six were designated entities.<sup>49</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>50</sup>

19. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.<sup>51</sup> This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.<sup>52</sup> Four winning bidders that identified themselves as very small businesses won 17 licenses.<sup>53</sup> Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

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<sup>44</sup> See FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

<sup>45</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>46</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>47</sup> See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>48</sup> See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>49</sup> *Id.*

<sup>50</sup> See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) (“AWS-1 and Broadband PCS Procedures Public Notice”).

<sup>51</sup> See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

<sup>52</sup> *Id.* at 23 FCC Rcd at 7521-22.

<sup>53</sup> See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749 (2008).

20. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>54</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>55</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.<sup>56</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.<sup>57</sup> Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.<sup>58</sup> The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>59</sup> A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>60</sup>

21. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>61</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>62</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

22. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.<sup>63</sup> We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

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

<sup>54</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>55</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>56</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

<sup>57</sup> “FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996,” *Public Notice*, 11 FCC Rcd 18599 (WTB 1996).

<sup>58</sup> *Id.*

<sup>59</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 11 FCC Rcd 18,637 (WTB 1996).

<sup>60</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>61</sup> See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (WTB 2000).

<sup>62</sup> See “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

<sup>63</sup> See generally 13 C.F.R. § 121.201, NAICS code 517210.

provisions such as bidding credits.<sup>64</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>65</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>66</sup> Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>67</sup> The SBA approved these small size standards.<sup>68</sup> The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.<sup>69</sup> Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>70</sup> The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>71</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>72</sup> In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.<sup>73</sup>

24. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.<sup>74</sup> The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for

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<sup>64</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52-59 Report and Order*).

<sup>65</sup> See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88 para. 172.

<sup>66</sup> See *id.*

<sup>67</sup> See *id.* at 1088 para. 173.

<sup>68</sup> See *Alvarez Letter 1999*.

<sup>69</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>70</sup> *Id.*

<sup>71</sup> See “Lower 700 MHz Band Auction Closes,” Public Notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>72</sup> See *id.*

<sup>73</sup> “Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60, Down Payments due August 19, 2005, FCC Forms 601 and 602 due August 19, 2005, Final Payment due September 2, 2005, Ten-Day Petition to Deny Period,” Public Notice, 20 FCC Rcd 13424 (WTB 2005).

<sup>74</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).



public safety users.<sup>75</sup> An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.<sup>76</sup> Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.<sup>77</sup>

25. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.<sup>78</sup> In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.<sup>79</sup> Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

26. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.<sup>80</sup> The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.<sup>81</sup> Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.<sup>82</sup>

27. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>83</sup> For this category, Census Bureau data

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<sup>75</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

<sup>76</sup> See *Auction of 700 MHz Band Licenses Closes*, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

<sup>77</sup> See “*Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92, Down Payments and FCC Forms 601 and 602 Due August 11, 2011, Final Payments Due August 25, 2011, Ten-Day Petition to Deny Period*,” *Public Notice*, 26 FCC Rcd 10,494 (WTB 2011).

<sup>78</sup> *700 MHz Second Report and Order*, 22 FCC Rcd 15,289.

<sup>79</sup> See *Auction of 700 MHz Band Licenses Closes*, *Public Notice*, 23 FCC Rcd 4572 (2008).

<sup>80</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>81</sup> *Id.*

<sup>82</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>83</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”.

for 2007 show that there were a total of 512 firms that operated for the entire year.<sup>84</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>85</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the *Notice*.

28. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>86</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>87</sup> Of this total, 2,346 firms had annual receipts of under \$25 million.<sup>88</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

29. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category to include: “establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”<sup>89</sup> In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees.<sup>90</sup> For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments, 4 had 500 or greater employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.<sup>91</sup>

30. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>92</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless

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<sup>84</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

<sup>85</sup> See *id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>86</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications”, <http://www.census.gov/naics/2007/def/ND517919.HTM>.

<sup>87</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>88</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

<sup>89</sup> U.S. Census Bureau, 2007 NAICS Definitions, 334290 Other communications equipment manufacturing, <http://www.census.gov/econ/industry/def/d334290.htm>.

<sup>90</sup> 13 C.F.R. 121.201, NAICS Code 334220.

<sup>91</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>92</sup> U.S. Census Bureau, 2007 NAICS Definition: 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007%20NAICS%20Search>.

Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees.<sup>93</sup> According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 17 had 1,000 or more employees and 27 had 500 or more employees.<sup>94</sup> Thus, under this size standard, the majority of firms can be considered small.

31. *Engineering Services.* The Census Bureau defines this category to include: “establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems.”<sup>95</sup> The SBA deems engineering services firms to be small if they have \$4.5 million or less in annual receipts, except military and aerospace equipment and military weapons engineering establishments are deemed small if they have \$27 million or less an annual receipts.<sup>96</sup> According to Census Bureau data for 2007, there were 58,391 establishments in this category that operated the full year. Of the 58,391 establishments, 5,943 had \$5 million or greater in receipts and 2,892 had \$10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.<sup>97</sup>

32. *Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing.* The Census Bureau defines this category to include “establishments primarily engaged in manufacturing direction, navigation, guidance, aeronautical, and nautical systems and instruments.”<sup>98</sup> The SBA deems Search, Detection, Navigation, Guidance, Aeronautical, and Nautical and Instrument Manufacturing firms to be small if they have 750 or fewer employees.<sup>99</sup> According to Census Bureau data for 2007, there were 647 establishments in operation in that year. Of the 647 establishments, 36 had 1,000 or more employees, and 50 had 500 or more employees. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>100</sup>

33. *Security Guards and Patrol Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing guard and patrol services.”<sup>101</sup> The SBA deems security guards and patrol services firms to be small if they have \$18.5 million or less in annual receipts.<sup>102</sup> According to Census Bureau data for 2007, there were 9,198 establishments in operation the full year. Of the 9,198 establishments, 355 had greater than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>103</sup>

<sup>93</sup> 13 C.F.R. § 121.201, NAICS Code 334220.

<sup>94</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=100&-ds\\_name=EC0731SG3&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=100&-ds_name=EC0731SG3&-_lang=en).

<sup>95</sup> U.S. Census Bureau, 2007 NAICS Definitions: 541330 Engineering Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=541330&search=2007%20NAICS%20Search>.

<sup>96</sup> 13 C.F.R. § 121.201, NAICS code 541330.

<sup>97</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-ds\\_name=EC0754SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0754SSSZ1&-_lang=en).

<sup>98</sup> U.S. Census Bureau, 2007 NAICS Definition: 334511 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334511&search=2007%20NAICS%20Search>.

<sup>99</sup> 13 C.F.R. § 121.201, NAICS code 334511.

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

<sup>101</sup> U.S. Census Bureau, 2007 NAICS Definition: 561612 Security Guards and Patrol Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561612&search=2007%20NAICS%20Search>

<sup>102</sup> 13 C.F.R. § 121.201, NAICS code 561612.

<sup>103</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0756SSSZ1&-_lang=en).

34. *All Other Support Services.* The Census Bureau defines this category to include “establishments primarily engaged in providing day-to-day business and other organizations support services.”<sup>104</sup> The SBA deems all other support services firms to be small if they have \$7 million or less in annual receipts.<sup>105</sup> According to Census Bureau data for 2007, there were 14,539 establishments in operation the full year. Of the 14,539 establishments, 273 had \$10 million or more in annual receipts, and 639 had \$5 million or greater in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.<sup>106</sup>

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

35. In this *Notice*, the Commission seeks public comment rule changes to improve the viability of technologies used to combat contraband wireless devices in correctional facilities. The rules are prospective in that they only apply if an entity avails itself of managed access or detection technologies. There are two classes of small entities that may be impacted; providers of wireless services, and providers or operators of managed access or detection systems used in correctional facilities.<sup>107</sup>

36. The proposed rules streamline the process for leasing spectrum to be used in a managed access system in correctional facilities, and require CMRS providers to terminate service to identified contraband wireless devices. With respect to rule changes to streamline the spectrum leasing process for managed access systems, the proposed rules do not directly impose any new recordkeeping requirements. To the extent that filing a form seeking approval or providing notification of a lease entered into for a managed access system is a reporting requirement, the proposed rules streamline reporting requirements.

37. Under current rules, the licensee and lessee of spectrum must file Form 608 seeking approval or providing notification of a lease. Due to existing leasing rules intended to protect competition, any lease notification or application for a managed access system filed after the first will likely result in a protracted application or notification review, because subsequent applications or notifications will be for spectrum covering identical geographic areas that could be used to provide an interconnected mobile service.<sup>108</sup>

38. The Commission’s proposed rule changes streamline the application review process by allowing entities to certify that the application or notification is for a managed access system in a state or local correctional facility. The proposed rules will require entities to attach a new certification explaining the nature of the managed access system, including the location of the correctional facility, the lessee’s relationship to the correctional facility, and the exact coordinates of the leased spectrum boundaries. While this may qualify as a reporting requirement, absent the rule lessees would still be required to identify the specific coordinates of the leased spectrum area in an attachment to Form 608. Therefore, to the extent this qualifies as a reporting requirement, the impact is neutral, if not positive.

39. The proposed rules will streamline the filing requirements for managed access providers that seek to modify the lease to indicate that the service offering is a PMRS. Under current processes, the lessee is presumed to be offering the same services as the licensee, and in managed access leases, the

<sup>104</sup> U.S. Census Bureau, 2007 NAICS Definition: 561990 All Other Support Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561990&search=2007%20NAICS%20Search>.

<sup>105</sup> 13 C.F.R. § 121.201, NAICS code 561990.

<sup>106</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0756SSSZ1&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=1000&-ds_name=EC0756SSSZ1&-_lang=en).

<sup>107</sup> In some instances, these rules may directly impact a state or local agencies that manage and oversee correctional facilities.

<sup>108</sup> See Part III.A.1 of the *Notice* for a more detailed discussion of the current spectrum leasing process under the Commission’s rules.

lessor likely provides a CMRS. Therefore, to modify the service offering to PMRS, the lessee must first file a lease application, and once the lease application is approved, it has to file to modify the lease to establish that the service is PMRS. Under the proposal in the *Notice*, managed access leases would presumptively be PMRS, thereby eliminating the need to file a modification.

40. The *Notice* also seeks comment on whether to require the managed access provider to provide notice to the households or businesses surrounding a correctional facility prior to activating the system. If the Commission adopts this requirement, it would be a new obligation that would consume some level of resources to identify the relevant households or businesses, generate a notice letter, mail the letter, and provide staff for any possible responses to the letter.

41. The proposed rules governing detection systems may impose new recordkeeping requirements and will impose new compliance requirements for CMRS providers and operators of detection systems. The proposed rules will require CMRS providers to terminate service to identified contraband wireless devices in correctional facilities. To the extent that any correctional facility installs and operates a system that can identify the relevant information necessary to terminate service to an identified contraband wireless device – therefore triggering CMRS providers’ obligations – CMRS providers would have to implement some type of internal process to terminate service to the contraband devices. This will likely require the allocation of resources to create the system, including some level of additional staffing necessary to meet the obligations under this requirement.

42. Additionally, the Commission seeks comment on the process for transmitting termination requests, including how the information that must be included in a termination request. It is possible that an outgrowth of the questions asked and responses received could result in specific requirements for the form in which the request is transmitted, including the type of information that is required. This may also require some level of recordkeeping to ensure that service to contraband devices, and not to legitimate devices, is terminated. To the extent the rules do impose these requirements, they will be necessary to ensure that legitimate wireless users are not impacted by operation of the system, which should be the minimum performance objective for any detection system. Therefore, while a specific form in which the termination request must be transmitted may impose some compliance or recordkeeping obligations, they are a necessary predicate for the operation of a detection system.

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

43. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules 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.”<sup>109</sup>

44. The proposed rules govern systems and technologies that are not widely deployed in the marketplace. To date, only two managed access system that have received Commission authorization or approval are operational. Similarly, while there are detection systems in active use in correctional facilities, there are no current rules that require CMRS providers to terminate service to contraband devices identified by detection systems.

45. The Commission seeks comment on the impact of some of its proposals, specifically with respect to the proposal to require CMRS providers to terminate service to identified contraband wireless devices, on small businesses. Commenters are asked whether small entities face any special or

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<sup>109</sup> 5 U.S.C. § 603(c)(1)–(c)(4).

unique issues with respect to terminating service to devices, and whether they would require additional time to take such action.

46. Historically, the Commission's license applications are not modified for small entities, and the Commission does not propose to do so in this *Notice* for our proposed modification of Form 608 for managed access leases. Sections 308, 309, and 310(d) of the Act require the Commission to determine whether licensing transactions are in the public interest. This analysis requires the same type of information regardless of the size of the entity.

47. The *Notice*, while it discusses at length the general design of managed access and detection systems, does not directly require or propose to require any specific design standard. However, the *Notice* does ask whether a specific performance standard may be necessary to ensure the accuracy of detection systems. The *Notice* asks whether the standard should differ between rural and urban areas, or between large and small detection system providers or operators.

48. Finally, the *Notice* does not propose any exemption for small entities. The Commission finds an overriding public interest in preventing the illicit use of contraband wireless devices by prisoners to perpetuate criminal enterprises, and a strong public interest obligation for the transfer of spectrum rights. Managed access providers must meet the necessary filing requirements for the Commission to meet its obligations under the Act. Further, to the extent that a small entity could be exempt from the proposed service termination requirement, it would reduce the overall effectiveness of a detection system. If inmates discover that a wireless provider whose service area includes the correctional facility does not terminate service to found devices within the facility, inmates will accordingly use only that service.

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

49. The *Notice* seeks comment on the application and relevance of Section 705 of the Act and Title 18 of the U.S. Code.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

*Re: Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111.

Late last year, the Commission issued a Notice of Proposed Rulemaking to explore whether we should take action to ensure that rates for interstate interexchange inmate calling services are just and reasonable.<sup>1</sup> In that item, we noted that allowing prisoners to maintain regular contact with their family members can help reduce recidivism.<sup>2</sup>

But while *authorized* phone calls placed by those who are incarcerated can produce real benefits, *unauthorized* phone calls between prisoners and their associates on the outside can be quite dangerous. Take the case of Patrick Byers. In mid-2007, Byers was being held in a Baltimore detention center awaiting trial on a murder charge. Unfortunately, like many of the inmates in that facility, Byers had access to a contraband cell phone. With his trial only 8 days away, Byers used that cell phone to order the murder of Carl Lackl, whom Byers' associates then killed on his front lawn.<sup>3</sup> Lackl, a 38 year-old father, was the prosecution's key witness to the crime—an innocent man who suffered the sad serendipity of being in the wrong place at the wrong time.

Unfortunately, stories like this one are not uncommon,<sup>4</sup> so it's not an exaggeration to say that preventing prisoners from making unauthorized phone calls can save lives. Today's item is an important step towards achieving that goal. I look forward to reviewing the record that will be compiled in response to our Notice and hope that we will act quickly to crack down on inmates' use of contraband wireless devices.

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<sup>1</sup> See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

<sup>2</sup> *Id.* at 16631–32, 16646, paras. 3–4, 48, & n.155.

<sup>3</sup> Tricia Bishop, *Murder on Call*, Baltimore Sun (Apr. 26, 2009), available at [http://articles.baltimoresun.com/2009-04-26/news/bal-te.md.murder26apr26\\_1\\_marcus-antwan-pearson-trial-witness-patrick-byers](http://articles.baltimoresun.com/2009-04-26/news/bal-te.md.murder26apr26_1_marcus-antwan-pearson-trial-witness-patrick-byers).

<sup>4</sup> See, e.g., *Feds: 25 Charged in Scheme to Smuggle Drugs, Cellphones into Baltimore Jail Facility*, Washington Post (Apr. 23, 2013) (“BGF has become the dominant gang at the prison complex, where members used the contraband cellphones to arrange drug smuggling and sexual encounters as well as to warn of investigations and order assaults and murders, according to the court documents.”), available at [http://www.washingtonpost.com/local/feds-25-charged-in-scheme-to-smuggle-drugs-cellphones-into-baltimore-jail-facility/2013/04/23/ae12dfd4-ac7c-11e2-9493-2ff3bf26c4b4\\_story.html](http://www.washingtonpost.com/local/feds-25-charged-in-scheme-to-smuggle-drugs-cellphones-into-baltimore-jail-facility/2013/04/23/ae12dfd4-ac7c-11e2-9493-2ff3bf26c4b4_story.html); Indictment, *U.S. v. White et al.*, at 10 (D. Md.) (Criminal No. ELH-13-0151, Apr. 1, 2013) (“The availability of contraband cell phones was the crucial device to link and coordinate all BGF criminal activity inside and outside the prison facilities.”).