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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: July 27, 2016 **Released: July 28, 2016**

Comment Date: [60 days after date of publication in the Federal Register]
Reply Comment Date: [90 days after date of publication in the Federal Register]

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("Notice"), we seek comment on proposals to streamline and harmonize our requirements for wireless licensees and applicants. We consider revising the Commission's Part 20 rules governing commercial mobile radio services. We propose to end the presumption contained in section 20.9 of the Commission's rules[1] that all applicants and licensees in the services identified in that section intend to license their facilities as commercial mobile radio service ("CMRS") operations by eliminating that section and making related rule changes.

2. We initiate this proceeding as a part of the Commission's process reform initiative[2] and to update and modernize our Part 20 and related rules. These proposed revisions to Part 20 are intended

[1] 47 C.F.R. § 20.9.

[2] *See* Report on FCC Process Reform, GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) ("*Process Reform Report*").

to eliminate the burden on applicants and licensees that desire to operate on a non-CMRS basis of having to overcome the presumption that their service offerings are CMRS.

II. BACKGROUND – CMRS REGULATORY PRESUMPTION

3. In 1993, Congress created the statutory classification of "commercial mobile services" to promote the consistent regulation of mobile radio services that are similar in nature.[3] Commission regulations refer to these services as commercial mobile radio services, or CMRS.[4] Specifically, Part 20 of the Commission's rules sets forth certain requirements and conditions applicable to commercial mobile radio service providers.[5] Section 20.9 identifies a number of wireless services, the rules for which are otherwise contained in parts 22, 24, 80, and 90; these services are presumed to be CMRS and treated as common carriage services.[6] Section 20.9 was adopted in 1994, at a time when many wireless rule parts drew clear lines between commercial and private operation in terms of service rules, obligations, and usage.[7] Since the applicable regulatory framework for most of the services covered by section 20.9 following passage of the 1993 OBRA were classified as CMRS,[8] the Commission framed the CMRS presumption for those services in mandatory terms.[9] Other wireless services, including many created after the effective date of section 20.9, are subject to regulatory frameworks that allow for more flexibility in how service may be provided, and were therefore not added to this listing of services presumed to be CMRS.[10]

4. There are two categories of services discussed in section 20.9, and each category entails a different process for overcoming the CMRS presumption. First, section 20.9(a) specifies that the following services "shall be treated as common carriage services and regulated as commercial mobile radio services . . . pursuant to Section 332 of the Communications Act:" (1) Part 90 private paging, with exclusions; (2) stations that offer Industrial/Business Pool eligibles (defined under section 90.35 of the Commission's rules) for-profit, interconnected service; (3) Land Mobile Systems on 220-222 MHz (Part 90), with exclusions; (4) Specialized Mobile Radio services that provide interconnected service (Part 90); (5) Public Coast Stations (Part 80); (6) Paging and Radiotelephone Services (Part 22); (7) Cellular Radiotelephone Services (Part 22); (8) Air-Ground Radiotelephone Service (Part 22); (9) Offshore Radiotelephone Service (Part 22); (10) any mobile satellite service involving the provision of commercial mobile radio service directly to end users, with exclusions; (11) mobile operations in the 218-219 MHz

[3] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b) ("1993 OBRA"), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(c).

[4] *See* 47 C.F.R. § 20.9(a); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Dkt. No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1413 (1994) ("*CMRS Second Report and Order*"). CMRS includes a number of wireless terrestrial services and also some mobile satellite services. Congress also established the promotion of competition as a fundamental goal for CMRS policy formation and regulation. 47 U.S.C. § 332(c)(1)(C).

[5] 47 C.F.R. § 20.1 *et seq.*

[6] In addition, section 20.9(a) includes as CMRS certain mobile satellite service offerings and for-profit subsidiary communications services transmitted on subcarriers within the FM baseband signal that provide interconnected service. 47 C.F.R. §§ 20.9(a)(10), 20.9(a)(13).

[7] *See CMRS Second Report and Order*, 9 FCC Rcd at 1417-19 (interpreted the elements of and adopted rules that define the terms "commercial mobile radio service" and "private mobile radio service").

[8] For example, under the Part 22 rules in effect at that time, licensees were required to provide service on a common carrier basis in order to hold a Part 22 license.

[9] *See* 47 C.F.R. § 20.9(a) (stating that the mobile services listed in that subsection "*shall be treated* as common carriage services and regulated as commercial mobile radio services") (emphasis added).

[10] These services include, for example, Advanced Wireless Services ("AWS"), Wireless Communications Services ("WCS"), and 700 MHz services.

Service (Part 95) that provide for-profit interconnected service to the public; (12) for-profit subsidiary communications services transmitted within the FM baseband signal, that provide interconnected service (section 73.295); and (13) a mobile service that is the functional equivalent of a commercial mobile radio service.[11] Section 20.9(a)(14) also notes that any service that is the functional equivalent of CMRS will be regulated as CMRS, establishes a presumption that anything not meeting the definition of CMRS will be presumed to be private mobile radio service ("PMRS"), and provides a process for challenging the PMRS presumption.[12] In recent years, the Commission has allowed entities in the services listed above to seek a waiver of the requirement that particular operations be treated as CMRS as part of an assignment, modification, or new authorization application.

5. Second, section 20.9(b) prescribes different procedures that apply to a Personal Communications Service ("PCS") (Part 24), VHF Public Coast Station ("VHF Public Coast") (Part 80), and Automated Maritime Telecommunication System ("AMTS") (Part 80) licensee or applicant seeking to overcome the CMRS presumption in order to offer service on a PMRS basis.[13] The licensee or applicant must file a certification as part of an application that demonstrates that its proposed service does not fall within the definition of CMRS.[14] This application is placed on public notice for 30 days.[15]

6. In 2004, the Commission revised its Part 22 rules to provide greater flexibility in the provision of service by eliminating the restriction that entities had to be common carriers in order to hold a Part 22 license.[16] There has been increased use of licenses in a number of the wireless services listed in section 20.9 for internal and private mobile radio service operations, such as by state and local governments using paging frequencies in support of their public safety operations, by licensees providing service only to a particular entity such as a hospital or school, or by commercial businesses seeking to use the spectrum for their own internal operations.

7. In addition, as the Commission has adopted service rules for new services established subsequent to the adoption of section 20.9, it has in many cases provided greater flexibility in their regulatory treatment. For example, the rules governing the AWS, WCS, and 700 MHz band services permit the provision of any service for which the spectrum is allocated by the Commission,[17] while the rules regarding the 218-219 MHz Service specifically provide that service may be provided on a common carrier basis or a private (non-common carrier and/or private internal-use) basis.[18] Applicants and licensees in these services are free to choose on their application "Common Carrier," "Non-Common Carrier," and/or "Private, Internal Communications" as their applicable regulatory status.[19]

8. Despite the Commission's decision in 2004 to afford greater flexibility in the licensing and operation of Part 22 services,[20] section 20.9(a) requires Part 22 applicants and licensees to seek a

[11] 47 C.F.R. §20.9(a).

[12] 47 C.F.R. §20.9(a)(14).

[13] 47 C.F.R. § 20.9(b).

[14] 47 C.F.R. § 20.9(b)(1).

[15] 47 C.F.R. § 20.9(b)(2).

[16] *See* Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, WT Dkt. No. 03-103, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4446 (2005) ("*Part 22 Rewrite*").

[17] 47 C.F.R. § 27.2, citing 47 C.F.R. § 2.106.

[18] 47 C.F.R. § 95.807(a). At the same time, however, section 20.9(a)(12) provides that for-profit interconnected service offered to the public by means of 218-219 MHz mobile operations is presumed to be CMRS.

[19] *See* Universal Licensing System ("ULS") Forms 601, 603.

[20] *Part 22 Rewrite*, 20 FCC Rcd at 4405-09.

waiver of the CMRS presumption if they plan to operate on any basis other than CMRS. For services listed in that subsection, Commission staff has allowed licensees and applicants to seek a waiver of the applicable subsection of section 20.9(a). For many services, these applications are processed routinely and granted with notations as to the waiver in the ULS record, with no order or letter required.[21] The inclusion of the waiver request as part of an application package, however, may lead to a longer period for processing the application. In the case of paging assignment applications, for example, where the proposed assignee seeks to use the spectrum for non-CMRS purposes, the inclusion of a request for waiver of any of the section 20.9 subparts means that the application must go on public notice for a minimum of 14 days;[22] in many cases, these applications otherwise would be granted overnight under our Immediate Application Processing procedures.[23]

9. For applicants and licensees of services included in section 20.9(b) (PCS, VHF Public Coast service, and AMTS), their applications to operate on a non-CMRS basis must be placed on public notice for at least 30 days before the Commission can act; however, in the case of assignment applications, many of these applications otherwise would be granted on an overnight basis.[24] Under both sections 20.9(a) and (b), however, processing of applications with waivers (under section 20.9(a)) and certifications (under section 20.9(b)) may delay the implementation of the applicant's or licensee's business plans and its effective use of the spectrum at issue.

III. DISCUSSION – PROPOSAL TO REVISE PART 20 AND MAKE RELATED CHANGES

10. This Notice proposes amendments to the Part 20 rules to update, streamline, and modernize them, including harmonizing the regulatory treatment of the various mobile radio services with regard to how applicants must report the regulatory classification of their facilities and easing spectrum acquisition in the secondary market consistent with suggestions received as part of the Commission's process reform efforts.[25] Specifically, we tentatively conclude that eliminating the CMRS presumption for those operators of services currently identified in section 20.9 would streamline application preparation and processing, and promote comparable treatment of wireless applicants and licensees.[26] Under the proposed elimination of section 20.9 contained in this Notice, applicants and licensees could simply inform the Commission in initial, modification, or assignment applications of their regulatory status.[27] We seek comment on our tentative conclusions, as well as the costs and benefits of our proposed approach.

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[21] Staff reviews the waiver requests under the applicable waiver standards. *See* 47 C.F.R. § 1.925.

[22] *See, e.g.,* 47 C.F.R. § 1.948(j)(1)(iii), (j)(2)(i)(C).

[23] *See* 47 C.F.R. §1.948(j)(2).

[24] *See id.*

[25] *See Process Reform Report* at 74-75, Objective 5.34 ("Entities that are classified as commercial mobile radio service ('CMRS') licensees are generally subject to different and more rigorous regulation than private mobile radio services. Certain licensed services, such as personal communications services and specialized mobile radio, are generally classified as CMRS, although a licensee can overcome this presumption by meeting certain requirements, which vary on a service-by-service basis. WTB should initiate a proceeding recommending changes to harmonize and streamline the rules that allow a licensee to overcome a CMRS presumption. Harmonizing and streamlining the rules could be particularly helpful to entities who acquire spectrum through the secondary market.").

[26] As discussed below, we note that these proposed rule changes would permit us to act on certain types of applications, *i.e.*, for services under Section 20.9(b) of the rules, under our Immediate Application Processing rules and without prior public notice. *See infra* para. 11; *see also* 47 C.F.R. 1.948(j)(2).

[27] Under this proposal and consistent with the terminology we currently use, an applicant would specify its regulatory status as common carrier (subject to CMRS obligations), non-common carrier (not subject to CMRS obligations), or private (also not subject to CMRS obligations). However, we also consider in this Notice whether to replace this terminology with the terms "CMRS" and "PMRS." *See infra* para. 26.

11. This proposed approach would shorten the period for processing of a number of applications, as well as eliminate the obligation of certain licensees and applicants in the services specified in section 20.9 to make a showing, even if brief, regarding their intent to operate on a non-common carrier or private basis. We tentatively conclude that shortening the period for application processing as well as lightening the regulatory burden currently imposed on licensees and applicants that apply to operate as non-CMRS providers in the services listed in section 20.9 will lead to more efficient and timely use of the licensed spectrum, without imposing any more regulatory burdens than those necessary for the Commission to oversee spectrum usage. We seek comment on this tentative conclusion.

12. In addition, we believe that the proposed elimination of section 20.9 would help to eliminate uneven and disparate regulation of wireless applicants and licensees. As we discussed above, the regulatory filing requirements and potential lengthening of the application processing period imposed by section 20.9 on licensees and applicants desiring to use spectrum identified in this rule section on a non-CMRS basis are not imposed uniformly on all spectrum and services, particularly when compared with those services for which service rules have been adopted in recent years by the Commission. We tentatively conclude that the public interest would be served by treating similarly situated entities on a more equitable, comparable basis.

13. The Commission, in adopting section 20.9, conducted an extensive review of the 1993 OBRA, its legislative history, and developments in regulation of wireless services.[28] The Commission noted that Congress "replaced the common carrier and private radio definitions that evolved under the prior version of Section 332 of the Act with two newly defined categories of mobile services: commercial mobile radio service (CMRS) and private mobile radio service (PMRS)," and "replaced traditional regulation of mobile services with an approach that brings all mobile service providers under a comprehensive, consistent regulatory framework and gives the Commission flexibility to establish appropriate levels of regulation for mobile radio services providers."[29] Two Congressional objectives appeared to drive these statutory changes: (1) "to ensure that similar [mobile] services would be subject to consistent regulatory classification[;]" and (2) to "establish[ ] and administer[ ] for CMRS providers" "an appropriate level of regulation."[30]

14. The Commission also noted that Congress was concerned with the "disparate regulatory treatment" that had evolved across services, observing that Congress's intent that the Commission establish consistent regulations was reflected in the statutory requirement that any service that amounted to a "functional equivalent" of CMRS be treated as CMRS even if the service did not fit the strict definition of that service.[31] At the same time, the Commission "anticipat[ed] that very few mobile services that do not meet the definition of CMRS will be a close substitute for a [CMRS]."[32] The Commission therefore decided to "presume that a mobile service that does not meet the definition of CMRS is a [PMRS]."[33] To rebut the presumption, a challenger to a PMRS claim was required to follow the method and meet the criteria that the Commission prescribed for demonstrating that the carrier claiming PMRS status was actually providing the functional equivalent of CMRS.[34] Section 20.9(a)(14) memorializes this presumption and the criteria for the showing that someone challenging the presumption would need to make to overcome it (*i.e.*, to demonstrate that an applicant purporting to offer PMRS is

[28] *See CMRS Second Report and Order*, 9 FCC Rcd 1411, 1414-19 ¶¶ 3-17.

[29] *Id.* at 1417 ¶¶ 11-12, referencing 1993 OBRA, § 6002(b) and changes it made to 47 U.S.C. § 332.

[30] *Id.* at 1418 ¶¶ 13-14, citing H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993) ("Conference Report").

[31] *See id.*, 9 FCC Rcd at 1445-47 ¶¶ 76-78, citing 47 U.S.C. § 332(d)(1), (d)(3); Conference Report at 496.

[32] *See id.* at 1447 ¶ 79.

[33] *Id.* at 1447-48 ¶¶ 79-80.

[34] *Id.*

actually offering services that are the functional equivalent of CMRS and thus warrants the corresponding level of regulation).[35] This rebuttable presumption has served as a reasonable mechanism for classifying a service as PMRS or CMRS for filing purposes, consistent with the statutory definitions. It does not, however, constitute the only approach for identifying whether a provider's proposed or existing service should be classified one way or another, and changes may now be warranted based on the development of CMRS and PMRS services and our experience with the application of the presumption, such as how parties have used it, how often and how successfully it has been challenged, and whether it tends to streamline the licensing processes or encumber them.

15. As discussed above, the substantial changes that have occurred in the wireless industry since the rule's adoption suggest that it is now an appropriate time to reexamine the need for the presumption, and this Notice seeks comment on its continued use and on other possible approaches. There has been increasing demand for PMRS use of spectrum and other rule changes permitting more flexible uses of spectrum in ways that section 20.9 does not encourage (*i.e.*, by requiring the filing of a waiver).[36] We observe that the section 20.9 construct, which treats certain mobile services differently depending upon where they fall in our rules, can result in application processing inefficiencies and delays for the affected services.[37] Given changed circumstances since the Commission adopted section 20.9, we tentatively conclude that eliminating the rule would help to further Congressional intent that the Commission avoid "disparate regulatory treatment" across mobile radio services.[38]

16. We also observe that section 20.3 of the rules defines "commercial mobile radio service" to include a mobile service that is "[t]he functional equivalent of a mobile service described in paragraph (a) of this section, including a mobile broadband Internet access service as defined in §8.2 of this chapter."[39] We therefore believe that section 20.3 of the rules, either in its current form or as we propose below to modify it, and in combination with other Commission rules and processes,[40] helps ensure that the Commission will continue to treat as CMRS any service that amounts to a "functional equivalent" of CMRS. We anticipate that the combined effect of our proposals to eliminate section 20.9 of the rules and rely on the CMRS definition in section 20.3 will continue to treat services operating as functionally equivalent to CMRS in the same way as we treat CMRS, while eliminating minor processing differences across types of wireless applications.

17. We seek comment on these proposals, including other ways to overcome the processing inefficiencies discussed above. For example, would amending section 20.9 help to address these concerns more effectively than eliminating the rule in its entirety? We seek comments on such alternatives, if any, as well as their costs and benefits.

18. We note that the elimination of one subsection of section 20.9 was recently endorsed by commenters responding to the Wireless Telecommunications Bureau's *Public Notice* regarding the applicability of paging and radiotelephone rules and soliciting comment on the need for technical

[35] 47 C.F.R. § 20.9(a)(14).

[36] *See supra* paras. 3-9.

[37] *See id.*

[38] *See supra* note 31.

[39] 47 C.F.R. § 20.3. Paragraph (a) defines "commercial mobile radio service" as "[a] mobile radio service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public."

[40] *See infra* para. 24 (citing authorities).

flexibility.[41] For example, the Land Mobile Communications Council stressed that eliminating section 20.9(a)(6)[42] would be consistent with the eligibility standard now reflected in section 22.7[43] and "would eliminate an unnecessary burden on applicants and the FCC staff."[44] Both the BloostonLaw Licensees and Nebraska Public Power District agreed that section 20.9(a)(6) should be eliminated.[45] We believe that the reasons used to support arguments in favor of the elimination of section 20.9(a)(6) apply to removal of section 20.9 in its entirety and seek comment on this view.

19. Regardless of what action we take regarding our proposal to eliminate section 20.9, we tentatively conclude that we should make a technical corrective edit to section 9.3 of the Commission's rules.[46] which includes definitions to be used in connection with the provision of interconnected Voice over Internet Protocol services. Specifically, section 9.3 defines "CMRS" as "Commercial Mobile Radio Service, as defined in §20.9 of this chapter."[47] We propose that this definition refer instead to section 20.3, which is the definition section for Part 20 and includes a definition of "commercial mobile radio service."[48]

20. We also find that a corrective edit to section 4.3(f) of our rules[49] is appropriate, whether or not we adopt the proposal to eliminate section 20.9. Section 4.3(f), which defines "wireless service providers" subject to outage reporting requirements, includes a cross-reference to section 20.9 for a definition of "commercial mobile radio service." As discussed above with respect to section 9.3, we propose instead that the definition in this section refer to the definition of "commercial mobile radio service" in section 20.3.[50]

21. We also propose to eliminate section 20.7, which includes a list of services defined as falling within the definition of "mobile services" as used in sections 3(n) and 332 of the Communications Act.[51] As with section 20.9, in light of the mobile services created since the Commission adopted this rule, section 20.7 is under-inclusive insofar as it does not include all the services that in fact are "mobile services" under the statutory language. Eliminating section 20.7 would not change the definition of "mobile service" contained in section 20.3, the Definitions section of Part 20. We tentatively conclude that section 20.7 no longer appears to serve a useful purpose, and we seek comment on that tentative conclusion and our proposal to eliminate this section.

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[41] *See* Wireless Telecommunications Bureau Reminds Paging and Radiotelephone Service Licensees of Certain Technical Rules and Seeks Comment on the Need for Technical Flexibility, WT Dkt. No. 14-180, *Public Notice*, 29 FCC Rcd 12673 (WTB 2014).

[42] Section 20.9(a)(6) provides that the Paging and Radiotelephone Service, regulated under Subpart E of Part 22, "shall be treated as common carriage services and regulated as commercial mobile radio services." 47 C.F.R. § 20.9(a)(6).

[43] Section 22.7 provides that "[a]ny entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part [22]," so long as "the applicant is legally, financially, technically and otherwise qualified to render the proposed service." 47 C.F.R. § 22.7.

[44] Comments of the Land Mobile Communications Council, WT Dkt. No. 14-180, at 4 (filed Dec. 17, 2014).

[45] Comments of the BloostonLaw Licensees, WT Dkt. No. 14-180, at 2 (filed Dec. 17, 2014); Reply Comments of Nebraska Public Power District, WT Dkt. No. 14-180, at 1 (filed Jan. 16, 2015).

[46] 47 C.F.R. § 9.3.

[47] 47 C.F.R. § 9.3, Definition of CMRS.

[48] 47 C.F.R. § 20.3, Definition of Commercial mobile radio service.

[49] 47 C.F.R. § 4.3(f).

[50] 47 C.F.R. § 20.3.

[51] 47 U.S.C. §§ 153(n), 332.

22. As we noted above, section 20.3 defines the term "commercial mobile radio service," and includes as part of that definition a mobile service that is "[t]he functional equivalent of a mobile service described in paragraph (a) of this section."[52] Section 20.9(a)(14), which would be deleted if we were to eliminate section 20.9 in its entirety, enumerates some of the factors that the Commission may consider in determining whether a mobile service is the functional equivalent of a commercial mobile radio service in cases where the service otherwise does not meet the definition of CMRS and the resulting presumptive classification of the service as PMRS has been challenged.[53] In this regard, section 20.9(a)(14) lays out the process for making such a challenge – *i.e.*, a challenger may attempt to defeat this presumptive classification by filing a petition for declaratory ruling challenging a mobile service provider's regulatory treatment as a private mobile radio service.[54] We ask interested parties to comment on whether retaining section 20.9(a)(14), or any of its subsections, would be useful to maintain as a practical and procedural set of guidelines for both the providers of mobile services and the Commission when applying the definitions of CMRS and PMRS, and whether we should move this language to section 20.3, as a subsection under the definition of commercial mobile radio service, or to another section in Part 20.

23. We tentatively conclude that nothing in the proposed elimination of sections 20.7 or 20.9 would affect the definition of "commercial mobile radio service" contained in section 20.3 of our rules or the obligations imposed on providers of commercial mobile radio services. Indeed, we wish to reiterate that we do not intend to change either any substantive CMRS regulatory policies with our proposal or other substantive policies pursuant to existing Commission rules affecting the licensees in the services that an amended Section 20.3 would address.[55] Rather, our proposal in this rulemaking regarding section 20.9 is narrow and we intend for it to eliminate an unnecessary burden upon certain licensees and applicants in services named in that section. There would be no change in the obligations imposed upon entities providing commercial or private mobile radio service. In this regard, we observe that we have the necessary authority, independent of the requirements of section 20.9, to take enforcement action against a licensee that intentionally tries to avoid CMRS regulation by misrepresenting that its service is or will be operated on a "non-common carrier" or "private" basis (*e.g.*, by selecting such status in an application filed with the Commission), when its service offering in fact falls within the CMRS definition and warrants being subject to the appropriate regulations as a result of that status.[56] We also observe that even if we eliminate the section 20.9(a)(14) PMRS presumption for providers whose service does not meet the strict CMRS definition, potential challengers would continue to have avenues available to challenge an applicant's or licensee's designation of its service as "non-common carrier" or "private," (*e.g.*, by filing a pleading challenging an application or its grant, based on the charge that the applicant's claimed

[52] 47 C.F.R. § 20.3.

[53] *See* 47 C.F.R. § 20.9(a)(14)(ii)(B).

[54] *See* 47 C.F.R. § 20.9(a)(14)(ii)(A).

[55] Such CMRS policies include, but are not necessarily limited to, roaming obligations, provision of E911 services, obligations pursuant to the Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 1001-1010, and compliance with hearing aid compatibility requirements. Although section 20.18(a) concerning CMRS E911 obligations excludes MSS, MSS providers have emergency obligations under Part 25, Satellite Communications. *Cf.* 47 C.F.R. §§ 20.18(a), 25.284 (Emergency Call Center Service).

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

regulatory status was incorrect).[57] Similarly, although those that might seek to challenge an application filed under section 20.9(b) of the rules might lose the 30-day notice period currently afforded by public notice, other avenues to challenge such applications would remain available.[58] We request comment on our tentative conclusions.

24. Section 20.9(a)(10) includes certain mobile satellite services and section 20.9(a)(13) includes certain FM subcarrier communications within the definition of "commercial mobile radio service." At this time, we see no reason not to treat these services the same as the other services identified in section 20.9, but we seek comment on any potential impact.[59]

25. We request comment on the necessary changes we need to make to our forms. For example, at present, Form 603 does not include the option for a proposed assignee/transferee to indicate a different regulatory status for a license that is the subject of a proposed transaction. We believe that, if we adopt revised rules as proposed above, we also will need to revise Form 603 to permit a proposed assignee or transferee to indicate a change in regulatory status.

26. In connection with revising our forms consistent with whatever action we take in this proceeding, at present, many of our forms provide the option of selecting one of the following statuses: "common carrier;"[60] "non-common carrier;"[61] or "private, internal communications."[62] The existing terms

[57] *See*, *e.g.*, 47 C.F.R. §§ 1.41 (informal objection), 1.106(a)(1) (petition for reconsideration), 1.115 (application for review). We note that although section 20.9(a)(14) supplies the option of a petition for declaratory ruling to overcome the presumption that a particular mode of operation is PMRS, the Commission has also considered similar allegations regarding whether a service provider is offering service functionally equivalent to a CMRS in contexts other than the declaratory ruling petition option. *See*, *e.g.*, Harold Pick, *Order on Reconsideration*, 22 FCC Rcd 730 n.3 (WTB 2007) (considering allegations regarding CMRS status in the context of a petition for reconsideration). We observe that these types of options to challenge a PMRS designation would continue to remain available if the Commission were to eliminate the presumption. *See*, *e.g.*, Interstate Consolidation, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 3330, 3333 ¶ 8 (considering allegations that a private land mobile radio application should have been dismissed or subject to hearing designation due to application defects, interference, and improper frequency coordination via an informal objection because private land mobile radio application procedures do not permit the filing of a petition to deny).

[58] *See supra* note 56 (citing authorities).

[59] We note that in response to the *Process Reform Report*, Inmarsat, Inc. ("Inmarsat") asserts that as a mobile satellite service ("MSS") provider, it "is often inadvertently grouped in with terrestrial CMRS service providers with respect to service requirements that are aimed at mass-market consumer services and equipment" and that such requirements may be appropriate for widely-available consumer services to tens or hundreds of millions of subscribers, but they are often not necessary or compatible with Inmarsat's MSS services that are targeted to specialized business and government users." Therefore, Inmarsat contends, "instituting procedures that would allow MSS providers to seek expedited decision on waivers or other relief from certain CMRS requirements would allow MSS providers to operate more efficiently without the burdens of consumer protection requirements that are unnecessary for specialized business and government products." Comments of Inmarsat, Inc., GN Dkt. No. 14-25, at 4 (filed Mar. 31, 2014). We note that this Notice is limited to seeking comment on a proposal to eliminate section 20.9 of the Commission's rules, and does not address the broader requests for relief sought by Inmarsat.

[60] The instructions for the Form 601 provide with respect to this status:

> All entities that are telecommunications carriers should select common carrier on this form. The term 'telecommunications carrier' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (the term 'aggregator' means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services). A telecommunications carrier shall be treated as a common carrier under the Communications Act and the Commission's Rules (*i.e.*, as an entity which holds itself out for hire indiscriminately, in interstate or foreign communications by wire or radio, or in interstate or foreign radio transmission of energy, for the purpose of carrying

(continued….)

derive from past usage about categories of mobile wireless operations. We seek comment on whether we should replace these existing regulatory status terms in the forms to reflect the CMRS/PMRS terminology. We note that both CMRS and PMRS are defined terms in section 20.3, and are terms consistent with section 332 of the Communications Act.[63] We tentatively conclude that using the existing terms of "common carrier," "non-common carrier," and "private, internal communications" tend to be confusing and that usage of the terms "CMRS" and "PMRS" with accompanying definitions in the form instructions would reflect more accurately the rules and statutory provisions on which the forms are based and thus be easier to understand. We seek comment on this tentative conclusion.

IV. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

27. *Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[64] Persons making 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 ("ECFS") 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.

(Continued from previous page)

> transmissions provided by the customer), only to the extent that it is engaged in providing telecommunications services.
>
> The term 'telecommunications service' means the offering of telecommunications (*i.e.*, the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received) for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

[61] The instructions for the Form 601 provide with respect to this status:

> Non-common carriers do not hold themselves out indiscriminately for hire as carriers of communications provided by the customer. A person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier. Thus, those entities meeting this definition would select non-common carrier for this item.

[62] The instructions for the Form 601 provide with respect to this status:

> Private internal users are those entities that utilize telecommunications services purely for internal business purposes or public safety communications and not on a for hire or for profit basis. Such entities should select 'Private' for this item.

[63] 47 U.S.C. § 332.

[64] 47 C.F.R. §§ 1.1200 *et seq*.

B. Filing Requirements

28. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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).

- 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.

  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 12th 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 12th 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Initial Regulatory Flexibility Certification

29. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, we have prepared an Initial Regulatory Flexibility Certification ("IRFC") of the possible significant economic impact on small entities of the policies and rules proposed in this *Notice*. The certification is found in Appendix B. We request written public comment on the certification. 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 IRFC. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Analysis

30. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

E. Availability of Documents

31. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.[65] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

F. Further Information

32. For additional information on this proceeding, contact Wilbert E. Nixon, Jr. of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0985, or by email: Wilbert.Nixon@fcc.gov.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j) and 11 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 161, that this Notice of Proposed Rulemaking in WT Docket No. 16-XX IS ADOPTED.

34. 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

[65] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

APPENDIX A

Proposed Rules

For the reasons discussed in the Notice of Proposed Rulemaking, we propose to amend Part4, 9, and 20 of Title 47 of the Code of Federal Regulations as follows:

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

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

2. Section 20.7 is amended as follows:

Remove Section 20.7.

3. Section 20.9 is amended as follows:

Remove Section 20.9.

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

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

5. Section 9.3 is amended as follows:

The definition of CMRS is amended to read as follows: Commercial Mobile Radio Services, as defined in §20.3 of this chapter.

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

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b) unless otherwise noted.

7. Section 4.3 is amended as follows:

***

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

APPENDIX B

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA)[1] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

In this *Notice*, we seek comment on proposals to streamline and harmonize our requirements for wireless licensees and applicants. We address a proposal to revise the Commission's Part 20 rules governing commercial mobile radio services. We propose to end the presumption contained in section 20.9 of the Commission's rules[6] that all applicants and licensees in the services identified in that section intend to license their facilities as commercial mobile radio service ("CMRS") operations by eliminating that section and making related rule changes. In addition, we propose to simplify the process by which an applicant or license in the affected services indicates its regulatory status in the relevant application forms.

We initiate this proceeding as a part of the Commission's process reform initiative[7] and to update and modernize our Part 20 and related wireless service rules. These proposed revisions to Part 20 are intended to eliminate the burden on applicants and licensees – including small entities – that desire to operate on a non-CMRS basis of having to overcome the presumption that their service offerings are CMRS.

The closest estimate of the number of small businesses that may potentially be affected by our proposed rule changes is the SBA's "Wireless Telecommunications Carriers (except Satellite)" category. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via airwaves. Establishments in this industry have spectrum licenses and provide services using spectrum, such as wireless phone services, paging services, wireless Internet access, and wireless video services – which are the types of services provided by the different types of licensees listed in section 20.9 of the Commission's rules. For this category, a business is considered small if it has 1,500 or fewer employees. For this category, census data for 2007 show that were 1,383

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq*., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. § 605(b).

[3] 5 U.S.C. § 601(6).

[4] 5 U.S.C § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[5] 15 U.S.C. § 632.

[6] 47 C.F.R. § 20.9.

[7] *See* Report on FCC Process Reform, GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) ("*Process Reform Report*").

firms that operated for the entire year. Of this total, 1,368 firms had 999 or fewer employees and 15 had 1,000 or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. We note that using this category to estimate the number of small entities potentially affected by our proposed action likely overstates the number of entities (small or otherwise) that in fact might be affected by our proposed rule changes since there are some entities falling in the wireless telecommunications carriers (except satellite) carrier that have no operations potentially affected by any of the changes we propose to make to Part 20.

We have determined that the impact on the entities affect by the proposed rule changes will not be significant. The most significant effect of the proposed rule change is to allow the affected entities, including small entities, greater flexibility in choosing their regulatory status as common carrier/CMRS or non-common carrier/private/PMRS and to reduce regulatory delays in the processing of applications that would implement such choices. We expect the impact of the proposed amendments to be a reduction in processing time regarding applications related to the entity's preferred regulatory status. We believe that this reduction in processing time and also perhaps in paperwork will be minimal but beneficial to all affected entities, including small businesses.

The Commission therefore certifies, pursuant to the RFA, that the proposals in this *Notice*, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the *Notice* require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the *Notice*, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the *Notice* and this initial certification will be published in the Federal Register.[8]

[8] *See* 5 U.S.C. § 605(b).