

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

In the Matter of
Partitioning, Disaggregation, and
Leasing of Spectrum
WT Docket No. 19-38

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Pai and Commissioners O’Rielly, Carr, Rosenworcel, and Starks issuing separate statements.

I. INTRODUCTION

1. As part of the Commission’s continuing efforts to close the digital divide and to increase spectrum access by small and rural carriers, the Commission adopts this Notice of Proposed Rulemaking exploring how potential changes to our partitioning, disaggregation, and leasing rules might better serve those goals. The Notice also satisfies the requirement under the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), which includes provisions requiring that the Commission take various actions concerning licensing, infrastructure, and deployment of wireless broadband services. Among the provisions is a requirement that the Commission initiate a rulemaking to consider specific questions related to the partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of advanced telecommunications services in rural areas and spectrum access by small carriers.

II. BACKGROUND

A. Existing Partitioning, Disaggregation, and Spectrum Leasing Rules

2. Partitioning and Disaggregation. Since its seminal 1996 CMRS Partitioning and Disaggregation Order, which adopted rules to permit geographic partitioning and spectrum disaggregation for Broadband PCS licenses, the Commission has adopted partitioning and disaggregation rules on a service-by-service basis as part of its long-held goal to provide licensees the “flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve.” The

1 MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 et seq. (2018). The MOBILE NOW Act became law on March 23, 2018.

2 Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21831, para. 1 (1996).

3 Id. See, e.g., Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16194-96, paras. 244-53 (2012) (AWS-4); Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Second Report and Order, 22 FCC Rcd 15289, 15381, 15355-58, paras. 178-88 (2007) (Lower 700 MHz); Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Second Report and Order, 12 FCC Rcd 19079, 19127-54, paras. 138-227 (1997) (800 MHz and 900 MHz SMR).

Commission continues to allow partitioning and disaggregation of licenses for all services categorized as Wireless Radio Services.⁴

3. The Commission's partitioning and disaggregation rules apply to all "Covered Geographic Licenses," which are defined to consist of specified wireless radio services for which the Commission has auctioned exclusive spectrum rights in defined geographic areas.⁵ Under these existing Commission rules, "geographic partitioning" is the assignment of a geographic portion of a geographic area licensee's license area.⁶ "Spectrum disaggregation" is the assignment of portions of blocks of a geographic area licensee's spectrum.⁷

4. Covered geographic area licensees currently may seek Commission approval for partitioning, disaggregation, or a combination of both, by filing FCC Form 603 as part of an application for a partial assignment of authorization, pursuant to section 1.948 of the Commission's rules.⁸ The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.⁹ Parties to a geographic partitioning, a spectrum disaggregation, or a combination of both have two options to satisfy service-specific performance requirements (i.e., construction and operation requirements).¹⁰ First, each party may certify that it will individually satisfy any service-specific requirements and, upon failure to do so, must individually face any service-specific performance penalties. Alternatively, both parties may agree to share responsibility for any service-specific requirements, and in the event of a failure to meet their shared service-specific performance requirements, both parties are subject to any service-specific penalties.

5. The Commission has received over 1,000 assignment applications involving partitioning and disaggregation pertaining to more than 4,000 licenses over the last 10 years. These have included assignment applications in which larger providers assigned spectrum to smaller entities.¹¹

6. *Spectrum Leasing.* In 2003, the Commission adopted the first comprehensive set of rules to allow licensees in the Wireless Radio Services to enter into a variety of spectrum leasing

⁴ See *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal et al.*, Second Report and Order and Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 8874 (2017) (*WRS Renewal Reform Second Report and Order*); see also 47 CFR § 1.950 (not yet effective).

⁵ See *id.* § 1.907 ("Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G); 218–219 MHz Service (part 95, subpart F); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Services (part 27, subparts K and L); Air–Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); Upper Microwave Flexible Use Service (part 30); and Wireless Communications Service (part 27, subpart D)."). The Commission adopted this definition in the *WRS Renewal Reform Second Report and Order*. Certain rule changes contain modified information collection requirements subject to the Paperwork Reduction Act of 1995, requiring public comment and review by the Office of Management and Budget (OMB), and will become effective upon approval by OMB.

⁶ 47 CFR § 1.950(a)(2).

⁷ *Id.* § 1.950(a)(3). An example of spectrum disaggregation is where Party A holds 30 megahertz of spectrum in an Economic Area (EA) and assigns half of it to Party B, resulting in Party A holding 15 megahertz over the entire EA (continued...)

arrangements.¹² In doing so, the Commission recognized the public interest benefits of permitting “additional spectrum users to gain ready access to spectrum,” thus enabling the “provision of new and diverse services and applications to help meet the ever-changing needs of the public.”¹³ Today, Subpart X of the Commission’s Part 1 rules establishes the requirements and procedures for spectrum leasing arrangements between licensees in the Wireless Radio Services.¹⁴

7. The Commission’s spectrum leasing rules apply to all “included services.” These services are listed in section 1.9005 of the Commission’s rules and include Wireless Radio Services in which commercial or private licensees hold exclusive use rights.¹⁵ A “spectrum leasing arrangement” is an arrangement between a licensed entity and a third-party entity in which the licensee (spectrum lessor) leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee.¹⁶ The arrangement may involve the leasing of any amount of licensed spectrum, in any geographic area or site encompassed by the license, for any period of time during the term of the license authorization. There are two different types of permissible spectrum leasing arrangements: spectrum manager leasing arrangements and *de facto* transfer leasing arrangements.

8. A spectrum manager leasing arrangement is one in which the licensee/lessor retains *de facto* control of the licensed spectrum that it leases to the spectrum lessee.¹⁷ A licensee/lessor is deemed to have *de facto* control over the leased spectrum if it satisfies two conditions: (i) the licensee/lessor retains responsibility for lessee compliance with Commission policy and rules; and (ii) the licensee/lessor retains responsibility for interactions with the Commission, including all filings, required under the license authorization and applicable service rules directly related to the leased spectrum.¹⁸ Subject to certain restrictions, spectrum manager leasing arrangements do not require prior Commission approval; rather, such arrangements are subject to certain notification requirements whereby the licensee/lessor must submit notice to the Commission of the arrangement in advance of commencing operations.¹⁹ While the licensee/lessor remains responsible for compliance with any construction and performance requirements applicable to the leased spectrum, the licensee/lessor may attribute to itself the build-out or

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and Party B holding 15 megahertz over the entire EA. We note that parties can also disaggregate and partition in combination, such as where Party A holds 30 megahertz of spectrum in an EA and assigns 5 megahertz in County X to Party B, resulting in Party A holding 25 megahertz in County X and 30 megahertz elsewhere in the EA, and Party B holding 5 megahertz only in County X.

⁸ *Id.* §§ 1.948, 1.950(c).

⁹ *Id.* § 1.950(e).

¹⁰ *Id.* § 1.950(g).

¹¹ See, e.g., FCC File No. 0005207547, filed May 14, 2014 (assigning partitioned 700 MHz A Block license from Cellco Partnership d/b/a Verizon Wireless to Texas Energy Network, LLC); FCC File No. 0005674615, filed Mar. 14, 2013 (assigning disaggregated Broadband PCS C Block license from New Cingular Wireless PCS, LLC (AT&T) to Coral Wireless, LLC); FCC File No. 0005330996, filed Sept. 6, 2012 (assigning partitioned Broadband PCS A Block license from T-Mobile License LLC to FWC Communications, Inc.).

¹² *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 (2003).

¹³ *Id.* at 20619, para. 32.

¹⁴ See 47 CFR § 1.9001 *et seq.*

¹⁵ *Id.* § 1.9005.

¹⁶ *Id.* § 1.9003.

¹⁷ *Id.* §§ 1.9010, 1.9020.

¹⁸ *Id.* § 1.9010(b).

performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements.²⁰

9. A *de facto* transfer spectrum leasing arrangement is an arrangement in which the licensee/lessor is generally relieved of the responsibility for ensuring that the spectrum lessee's operations comply with the Communications Act and Commission policies and rules.²¹ *De facto* transfer spectrum leasing arrangements can be either long-term (more than one year)²² or short-term (one year or less).²³ In general, *de facto* transfer spectrum leasing arrangements are subject to the Commission's general approval procedures, under which the licensee/lessor and proposed lessee must file an FCC Form 608, and the Commission must grant the application prior to the parties' putting the proposed spectrum leasing arrangement into effect.²⁴ Both long-term and short-term *de facto* transfer spectrum leasing applications are subject to overnight processing under the Commission's immediate approval procedures if the filing meets certain conditions.²⁵ If a long-term *de facto* transfer spectrum leasing application is not granted under the immediate approval procedures, the application is placed on an accepted for filing public notice (usually for 14 days) before the Commission may act on the filing. Short-term *de facto* transfer spectrum leasing applications do not require advance public notice prior to Commission action. A licensee/lessor that enters into a long-term *de facto* transfer spectrum leasing arrangement may attribute to itself the buildout or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements; a licensee/lessor may not do so under a short-term *de facto* transfer spectrum leasing arrangement.²⁶

10. The Commission has received more than 8,000 spectrum lease applications and notifications pertaining to approximately 26,000 licenses over the last 10 years.

B. Statutory Requirement

11. Section 616 of the MOBILE NOW Act requires that, within a year of its enactment, the Commission:

[I]nitiate a rulemaking proceeding to assess whether to establish a program, or modify existing programs, under which a licensee that receives a license for exclusive use of spectrum in a specific geographic area under section 301 of the Communications Act of 1934 (47 U.S.C. 301) may partition or disaggregate the license by sale or long-term lease-

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¹⁹ *Id.* § 1.9020(e) (requiring 21 days advance notice for spectrum manager leasing arrangements greater than one year in length, or 10 days advance notice for arrangements of one year or less in length). The Commission reviews the notifications to ensure that all necessary technical and other information is correctly submitted, but the subject spectrum leasing arrangement may be implemented without waiting for such review, unless the parties to the spectrum manager leasing arrangement have requested on the form that the arrangement become effective upon Commission acceptance of the notification. Spectrum manager leasing applications require no prior public notice before the Commission may accept them.

²⁰ 47 CFR § 1.9020(d)(5).

²¹ *Id.* § 1.9030(b).

²² *Id.* § 1.9030(a).

²³ *Id.* § 1.9035(a).

²⁴ *Id.* §§ 1.9030(a), 1.9035(a).

²⁵ *Id.* §§ 1.9030(e)(2) (immediate approval procedures), 1.9035(e) (certain conditions still must be met in order for a short-term *de facto* transfer lease to qualify for immediate processing).

²⁶ 47 CFR §§ 1.9030(d)(5), 1.9035(d)(3). See also *Promoting Efficient Use of Spectrum*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20676, para. 177 (2003) (“[S]hort-term leasing arrangements are expressly designed to be temporary in nature, and therefore cannot be counted to establish that the licensee is meeting the purposes and policies underlying our buildout rules, including the goal of ensuring establishment of service in rural areas.”).

- (A) in order to-
- (i) provide services consistent with the license; and
 - (ii) make unused spectrum available to-
 - (I) an unaffiliated covered small carrier; or (II) an unaffiliated carrier to serve a rural area; and
- (B) if the Commission finds that such a program would promote- (i) the availability of advanced telecommunications services in rural areas; or (ii) spectrum availability for covered small carriers.²⁷

12. Section 616 requires the Commission to consider four questions in conducting the rulemaking. First, would “reduced performance requirements with respect to the spectrum obtained through the program . . . facilitate deployment of advanced telecommunications services in areas covered by the program”?²⁸ Second, “what conditions may be needed on transfers of spectrum under the program to allow covered small carriers that obtain spectrum under the program to build out the spectrum obtained under the program in a reasonable period of time”?²⁹ Third, “what incentives may be appropriate to encourage licensees to lease or sell spectrum, including (i) extending the term of a license . . . or (ii) modifying performance requirements of the license relating to the leased or sold spectrum”?³⁰ And fourth, what is “the administrative feasibility” of those incentives and of “other incentives considered by the Commission that further the goals of [Section 616]”?³¹ Section 616 provides, however, that the Commission “may offer a licensee incentives or reduced performance requirements under this section only if the Commission finds that doing so would likely result in increased availability of advanced telecommunications services in a rural area.”³² Additionally, Section 616 directs that, “[i]f a party fails to meet any build out requirements set by the Commission for any spectrum sold or leased under this section, the right to the spectrum shall be forfeited to the Commission unless the Commission finds that there is good cause for the failure of the party.”³³

13. In establishing its dual goals of making spectrum available to small carriers and promoting the availability of advanced telecommunications services in rural areas, Section 616 defines two key terms. “Covered small carrier” is a carrier³⁴ that “(A) has not more than 1,500 employees (as determined under section 121.106 of title 13, Code of Federal Regulations, or any successor thereto); and (B) offers services using the facilities of the carrier.”³⁵ And “rural area” is any area other than “(A) a city,

²⁷ *Id.* § 616(b)(1)(A)-(B).

²⁸ *Id.* § 616(b)(2)(A).

²⁹ *Id.* § 616(b)(2)(B).

³⁰ *Id.* § 616(b)(2)(C).

³¹ *Id.* § 616(b)(2)(D).

³² *Id.* § 616(b)(4).

³³ *Id.* § 616(b)(3).

³⁴ Section 616 directs the Commission to use the definition of “carrier” contained in section 3 of the Communications Act of 1934, which defines a carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . . but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.” 47 U.S.C. § 153(11).

³⁵ MOBILE NOW Act, § 616(a)(1).

town, or incorporated area that has a population of more than 20,000 inhabitants; or (B) an urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants.”³⁶

III. DISCUSSION

14. The Commission’s existing partitioning, disaggregation, and leasing rules are designed to facilitate spectrum access and encourage secondary market transactions that will lead to efficient use of spectrum. Today, we seek comment on whether to establish a program, or modify existing programs, for the partitioning, disaggregation, and leasing of licenses. We also seek comment on what, if any, changes would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers—such as allowing additional time to meet performance obligations under certain circumstances. We also ask commenters to address three considerations set forth in Section 616, including addressing the administrative feasibility of each consideration; they are: (1) whether reduced performance requirements applicable to partitioned or disaggregated licenses would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers; (2) what conditions may be needed to eliminate impediments to transfers of spectrum to covered small carriers to allow them to build out in a reasonable period of time; and (3) what incentives may encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas. We seek to develop a record on the success of the Commission’s existing rules and therefore seek comment on whether further Commission action would likely promote the availability of advanced telecommunications services in rural areas and facilitate access to spectrum by covered small carriers.

A. Reduced Performance Requirements In Rural Areas

15. We seek comment on whether reduced performance requirements for partitioned or disaggregated licenses would facilitate the deployment of advanced telecommunications services in rural areas. The Commission’s rules permit parties to a partition or disaggregation to agree either to share the responsibility for meeting performance requirements or to satisfy the requirements individually. We seek comment on potential modifications to these requirements that may be likely to increase service to rural areas, and on how to ensure that reduced performance requirements do not lead to reduced service in rural areas.

16. The Commission could adjust the performance requirements applicable to partitioned or disaggregated licenses either substantively (e.g., through reduced buildout requirements) or temporally (e.g., by extending deadlines for performance). We seek comment on what, if any, such adjustments may be appropriate in this context. Would the reduced performance requirements apply to the original licensee, the entity gaining access to the spectrum, or both? Would a reduced buildout requirement in rural areas promote deployment in those areas, which might otherwise go unserved? If so, how? Would an extended deadline for performance increase a licensee’s ability and likelihood to provide service in rural areas? How would the Commission ensure that any reduction in performance requirements results in increased rural area deployment? Would the Commission have to pair reduced performance requirements with increased oversight, and subsequently increased penalties if these performance requirements are not met? Is there a minimum set of performance requirements that are necessary to ensure adequate buildout? How would the Commission measure the change in service to rural areas under differing levels of potential performance requirements?

17. With respect to our goal of promoting advanced telecommunications service in rural areas, we seek comment on whether, for example, to extend by one year a receiving party’s construction deadline for a partitioned or disaggregated license when (i) the receiving party is a rural carrier or is acquiring spectrum that includes “rural areas,” as defined by Section 616, and (ii) the receiving party elects to meet the construction requirement independently for its partitioned or disaggregated license area.

³⁶ *Id.* § 616(a)(2).

Under this scenario, to receive the one-year extension, should the party receiving the spectrum provide service to a certain percentage of the “rural areas” within its license area, such as 25 percent? Is 25 percent the appropriate metric to qualify for any rural area service extension, or should the percentage be higher, lower, or dependent upon some other factor, such as the size of the receiving party’s license area? Should the receiving party’s license area contain some minimum amount of “rural area” to qualify for the one-year extension? We seek to facilitate transactions that will promote rural deployment by providing relief that will substantially benefit licensees. As parties may not need construction relief early in a ten-year license term, should we only apply an extension to transactions occurring within a certain timeframe, for example, no sooner than three years from the construction deadline? Conversely, our rules provide that extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization.³⁷ To prevent filing a transaction and extension request late in the construction period to avoid loss of license, should we limit any one-year construction extension to requests filed no later than six months before the construction deadline, or some other appropriate timeframe?

18. Should the one-year extension apply to interim construction requirements, final requirements, or both? For a license that receives a one-year extension for its final performance requirement, should the Commission also extend by one year the license term where the final construction deadline is coincident with renewal? If not, what would be the effect of the extension on the licensee’s required renewal showing? Similarly, what would be the effect of the extension on the licensee’s continuity of service obligations? How would the Commission measure the change in service to rural areas with and without a one-year extension? What would be the costs and benefits to delaying construction in rural areas? How would we compare the cost of the potential short-term delay in construction to the potential long-term benefit of an increase in service to rural areas?

19. Commenters advocating for these specific approaches, or for other approaches involving reduced performance requirements, should discuss how they would be implemented, including how and when they would take effect, to whom they would apply, and any specific conditions that should apply. Commenters should also describe in detail how any such implementation would serve to promote the availability of advanced telecommunications services in rural areas. Further, in light of Section 616’s requirement that the Commission consider the administrative feasibility of implementing reduced performance requirements, commenters should discuss the costs and benefits of any proposed implementation. How would these costs and benefits be measured?

B. Conditions on Transfers of Spectrum to Covered Small Carriers

20. As a threshold matter, the MOBILE NOW Act directs the Commission to focus on programs that would promote spectrum availability for “covered small carriers,” a term that as noted above encompasses only common carriers.³⁸ While we seek comment below on issues relating to “covered small carriers,” as required, we also seek comment on whether we should consider applying any rule revisions to an expanded class of licensees beyond those Congress requires us to consider. Would expanding the rule revisions serve the purposes of the MOBILE NOW Act, including the purpose of promoting “the availability of advanced telecommunications services in rural areas”? If commenters believe the Section 616 definition of “covered small carrier” is under-inclusive,³⁹ they should describe

³⁷ See 47 CFR § 1.946(e).

³⁸ See 47 U.S.C. § 153(11).

³⁹ See Letter from Stephen E. Coran, Lerman Senter PLLC, Counsel to WISPA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-38 *et al.*, at 1-2 (Mar. 8, 2019) (urging the Commission to seek comment on whether the benefits of the proposed rules should be extended to rural broadband providers that are not “carriers” as defined by Section 616, which WISPA argues would exclude broadband providers that are not “common carriers”); *see also* Letter from Nicole Tupman, Assistant General Counsel, Midcontinent Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-38, at 1 (Mar. 7, 2019).

what category or categories of licensee should be subject to any Commission rule change, the effects of applying any rule changes to entities that are not common carriers, how the Commission should adjust our rules to better meet our goals in this proceeding of facilitating secondary markets transactions, and the costs and benefits of such an approach.

21. We seek comment on what conditions may be needed on transfers of spectrum to allow covered small carriers to build out in a reasonable period. We seek comment on whether there are procedural barriers to partitioning or disaggregation that limit the utility of those programs for covered small carriers. Are there certain parties that are currently foreclosed from partitioning, disaggregating, or leasing spectrum due to such barriers, that might otherwise make use of the existing programs in the absence of those barriers? If so, we seek comment on the nature of those barriers and the types of entities that are currently foreclosed.

22. In addition to procedural barriers to partitioning and disaggregation, we seek comment on whether there are substantive barriers with respect to covered small carriers' ability to satisfy performance requirements applicable to the partitioned or disaggregated spectrum. Do covered small carriers require reduced or modified performance requirements in order to successfully build out the spectrum obtained through such arrangements? Would reduced construction obligations for an entire license area lead to increased construction or service for certain parts of that market? Would extended performance deadlines increase the number of covered small carriers that are willing and able to obtain spectrum through partitioning, disaggregation, or lease arrangements? How could the Commission ensure that a reduction in construction requirements does not lead to a reduction in services deployed? Would the reduced obligations apply to the original licensee, the entity gaining access to the spectrum, or both? For example, would a one-year construction requirement extension, akin to that discussed above with respect to transactions involving rural carriers, be appropriate for transfer of spectrum to covered small carriers? Commenters advocating any special conditions for covered small carriers should describe in detail the extent to which such conditions are necessary or likely to increase covered small carrier participation in the Commission's existing or new partitioning, disaggregation, and leasing programs.

23. As stated, the Commission has received more than 1,000 assignment applications involving partitioned or disaggregated licenses over the last 10 years, which included assignment applications in which larger providers assigned spectrum to smaller entities. We seek comment on whether our current rules promote the efficient level of secondary market transactions. What are the costs and benefits, if the rules were to be changed?

24. We seek comment on these and any other relevant considerations regarding special conditions for covered small carriers that obtain access to spectrum through partition or disaggregation. Commenters should discuss in detail both the necessity and the likelihood of any such conditions resulting in increased spectrum availability for covered small carriers. Further, in light of the Section 616 requirement that the Commission consider the administrative feasibility of special conditions for covered small carriers, commenters should also discuss the costs and benefits of any conditions they advocate. What are the potential costs of modified performance requirements in terms of speed and quality of deployment? What are the benefits in terms of increased coverage and quality of service, including in rural areas? How would these costs and benefits be measured?

C. Incentives To Encourage Lease or Sale

25. In light of Section 616's requirement that we consider incentives that might encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas, we seek comment on what, if any, incentives may be appropriate to achieve this end, including license term extensions or modified performance requirements. Are there certain substantive or procedural barriers to leasing that inefficiently limit use of the program by spectrum licensees? For example, where our spectrum leasing rules require Commission consent to an application prior to consummation, does the administrative burden of seeking such prior approval act to deter such transactions, and, if so, do such disincentives have a disproportionate effect on transactions with covered

small carriers or unaffiliated carriers that seek to provide service to rural areas? Would a longer license term or modified performance requirements be effective in counteracting those administrative burdens?

26. As stated, the Commission processed over 8,000 spectrum lease applications in the last 10 years. We seek comment on whether our existing secondary markets rules are sufficiently flexible to provide adequate incentives for licensees to sell or lease their spectrum rights to covered small carriers or unaffiliated carriers that seek to provide service to rural areas. For example, in addition to earning revenue from such transactions, licensees that enter into long-term leases may attribute the buildout and performance activities of the lessee for purposes of satisfying the licensee's own performance obligations.⁴⁰ Are such incentives sufficient to encourage licensees to sell or lease their spectrum rights to such carriers? We seek comment on the effectiveness of existing benefits of sale or lease, and whether further incentives would be likely to encourage licensees to lease or sell spectrum.

27. We seek comment on whether and how modified performance requirements or longer license terms might encourage more licensees to sell or lease their spectrum rights. Commenters should discuss the incremental benefits of increasing the number of spectrum sales or leases relative to the potential collateral effects that such incentives may have. For example, while reduced buildout requirements may increase the number of licensees willing to lease spectrum, it may also decrease deployment of advanced wireless services in those license areas as a result of the reduced performance requirements. We therefore seek comment on the specific costs and benefits of any incentives that commenters advocate and the relative weight the Commission should apply in evaluating whether those incentives would be likely to result in increased availability of advanced telecommunications services in rural areas. Would the Commission have to pair reduced performance requirements with increased oversight, and subsequently increased penalties if these performance requirements are not met? Is there a minimum set of performance requirements that are necessary to ensure adequate buildout? In cases where the party receiving the spectrum is an unaffiliated carrier that will serve rural areas, how can we ensure adequate buildout to rural areas? How would the Commission measure the change in service to rural areas under differing levels of potential performance requirements?

28. We also seek comment on whether allowing spectrum "reaggregation" for spectrum that has been partitioned or disaggregated on the secondary market—up to the size of the original market area—would increase the incentives of parties to lease or sell spectrum in the first place, and thus ultimately meet the dual goals of increasing the availability of advanced telecommunications services in rural areas and facilitating access to spectrum by covered small carriers. Under our current rules, while licensees may partition and disaggregate their licenses through spectrum transactions, there is no provision for reaggregating spectrum, even when the partitioned or disaggregated portions of an original market area are acquired by a single entity. Holding multiple licenses for what was once a single license may impose certain regulatory and administrative burdens on licensees, including construction requirements, renewal showings, continuous service requirements, and the need to maintain up-to-date information in ULS. In the context of other proceedings, some parties have asked the Commission to allow reaggregation of spectrum to ease these burdens.⁴¹ We seek comment on the relationship between reducing these burdens and incentivizing spectrum transactions.

29. One potential disadvantage of allowing reaggregation is that carriers may attempt to use it to avoid construction requirements. Should we only permit spectrum reaggregation where the licensee has already met its construction obligations with respect to the reaggregated spectrum? Should other conditions apply before reaggregation is allowed to ensure that construction requirements for both areas

⁴⁰ However, in a spectrum manager lease of any length term, the licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements. *See* 47 CFR § 1.9020(d)(5).

⁴¹ *See, e.g.*, Sprint Comments, WT Docket No. 10-112, at 19-20 (filed Aug. 6, 2010); AT&T Reply Comments, WT Docket No. 10-112, at 12 (filed Aug. 23, 2010).

of the reaggregated spectrum are met? Or should the Commission allow the licensee of the reaggregated spectrum to meet the performance requirements of the original market area? What filings and/or showings could we require the licensee to make to expedite Commission review of construction obligations in reaggregated spectrum? If spectrum reaggregation were allowed, what safeguards should the Commission put in place to prevent entities from using the process as a way of “laundering” their regulatory obligations?

30. Should the Commission require that licensees meet renewal requirements and continuity of service obligations with respect to the reaggregated spectrum? If so, what measures could the Commission put in place to ensure that licensees comply with these requirements? What filings and/or showings could we require the licensee to make to expedite Commission review? Again, we seek comment on what safeguards the Commission should put in place to ensure that licensees potentially permitted to reaggregate their licenses meet regulatory obligations with respect to renewal and continuity of service. Would the Commission have to pair reaggregation with increased oversight, and subsequently increased penalties if certain buildout thresholds are not met? How would the Commission measure the change in service to rural areas with and without spectrum reaggregation? Would there be a chance that a reaggregated license would cause a barrier to entry for other providers, thereby potentially reducing buildout in rural areas? What are the other costs and benefits that may be associated with reaggregation? We note that legal, policy, and technical review—and adjustments to license and map files—would be required in order for Commission staff to process what could be hundreds of reaggregation applications a year. These filings would compete with the many other filings before Commission staff for their attention.

31. If commenters advocate for incentives such as modified performance requirements, longer license terms, spectrum reaggregation, or another incentive, they should describe in detail how the incentive would likely increase the availability of advanced telecommunications services in rural areas or facilitate access to spectrum by covered small carriers. Further, in light of the Section 616 requirement that the Commission consider the administrative feasibility of providing incentives to lease or sell spectrum, commenters should also discuss the costs and benefits of any incentives they advocate. How would these costs and benefits be measured?

IV. PROCEDURAL MATTERS

32. *Ex Parte Presentations.*—This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴² 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,

⁴² 47 CFR §§ 1.1200 *et seq.*

searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

33. *Comment Period and Filing Procedures.*—Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one active docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

34. 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

35. 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).

36. *Availability of Documents.*—Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

37. *Initial Regulatory Flexibility Analysis.*—As required by the Regulatory Flexibility Act,⁴³ the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities of the policies and rules addressed in this *Notice*. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice*, and should have a separate and distinct heading designating them as responses to the IRFA.

38. *Further Information.*—For additional information on this proceeding, contact Anna Gentry of the Mobility Division, Wireless Telecommunications Bureau, at anna.gentry@fcc.gov or (202) 418-7769.

⁴³ 5 U.S.C. § 603.

V. ORDERING CLAUSES

39. IT IS ORDERED, pursuant to the authority found in Sections 1, 4(i), 303, and 310(d) of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 303, 310(d), and Pub. L. No. 115-141, Div. P, Title VI, § 616, 132 Stat. 348, that this *Notice of Proposed Rulemaking* IS HEREBY ADOPTED.

40. IT IS FURTHER ORDERED that the Commission's Consumer and 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

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ 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 of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments 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).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. As part of the Commission's continuing efforts to close the digital divide and to increase spectrum access by small and rural carriers, the Commission adopts this *Notice* exploring how potential changes to our partitioning, disaggregation, and leasing rules might better serve those goals. The *Notice* also satisfies the Commission's requirement under the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act),⁴ which includes provisions requiring that the Commission take various actions concerning licensing, infrastructure, and deployment of wireless broadband services. Among those provisions is a requirement that the Commission initiate a rulemaking to consider specific questions related to partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of advanced telecommunications services in rural areas and spectrum access by covered small carriers.

B. Legal Basis

3. The proposed action is authorized pursuant to Sections 1, 4(i), 303, and 310(d) of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 303, 310(d), and Pub. L. No. 115-141, Div. P, Title VI, § 616, 132 Stat. 348.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ A small business

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

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et seq.* (2018) (MOBILE NOW Act). The MOBILE NOW Act became law on March 23, 2018.

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ 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

(continued....)

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.⁸

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9 percent of all businesses in the United States, which translates to 28.8 million businesses.¹¹

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹² Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹³

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁴ U.S. Census Bureau data from the 2012 Census of Governments¹⁵ indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number there were 37,132 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts¹⁹ and special districts²⁰) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.²¹ Based on this data we estimate that at least 49,316 local government

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publishes such definition(s) in the Federal Register."

⁸ 15 U.S.C. § 632.

⁹ See 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1—What is a small business?," https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹¹ See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2—How many small businesses are there in the U.S.?", https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹² 5 U.S.C. § 601(4).

¹³ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php>, where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

¹⁴ 5 U.S.C. § 601(5).

¹⁵ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7." See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>

jurisdictions fall in the category of “small governmental jurisdictions.”²²

8. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁴ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.²⁵ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more.²⁶ Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

9. The Commission has determined from data available in its Universal Licensing System that there are approximately 1,095 unique licensees corresponding to more than 40,000 licenses in the Wireless Radio Services that could be affected by this *Notice*, as of February 21, 2019.²⁷ The

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¹⁶ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁷ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

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

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by
(continued....)

Commission does not know how many licensees in these bands are small entities, as the Commission does not collect that information for these types of entities.

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

10. The proposed actions in the *Notice*, if adopted, may impose reporting, recordkeeping and other compliance requirements on small entities as well as other licensees. For example, there are potential changes to performance requirements that could alter existing, or create additional, recordkeeping and compliance obligations for small entities as well as other licensees. Specifically, the *Notice* seeks comment on whether to reduce performance requirements for partitioned or disaggregated licenses to facilitate the deployment of advanced telecommunications services in rural areas and access to spectrum by covered small carriers. The *Notice* also asks whether the Commission would have to pair reduced performance requirements with increased oversight, and whether reduced performance requirements would apply to the licensee, the entity gaining access to spectrum, or both. The *Notice* directs commenters advocating for reduced performance requirements to discuss how they would apply and be implemented, any specific conditions that would apply, how and when they would take effect, and the costs and benefits of any proposed implementation, including how the costs and benefits should be measured.

11. To advance the Commission's goal of promoting advanced telecommunications service in rural areas, the *Notice* explores whether there should be changes to construction deadlines and how any

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Enrollment-Size Group and State: 2012 - United States-States.

<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

²¹ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38,266 special district governments have populations of less than 50,000.

²² *Id.*

²³ U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)." See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

²⁴ 13 CFR § 121.201, NAICS code 517210.

²⁵ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

²⁶ *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 "1000 employees or more."

²⁷ See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA and consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

modified deadlines should be applied. In this regard, the *Notice* seeks comment on whether to extend by one year the performance requirement deadline for a party receiving partitioned or disaggregated spectrum if certain conditions are met, including that the license is partitioned or disaggregated to a rural carrier or includes a certain amount of “rural areas,” as defined by Section 616 of the MOBILE NOW Act, and the party receiving the spectrum independently meets the construction requirements. The *Notice* asks whether a similar extension should apply with respect to transactions involving “covered small carriers,” as defined by Section 616. Recognizing that the MOBILE NOW Act’s definition of “covered small carriers” encompasses only common carriers, the *Notice* seeks comment on whether the Commission should consider applying any rule revisions stemming from this proceeding to an expanded class of licensees beyond those Congress requires it to consider, and the effects of any rule changes to entities that are not common carriers. If the Commission were to adopt this type of one-year extension of performance requirement deadlines, it could also potentially impact both renewal and continuity of service obligations for licensees. The *Notice* asks what the effect of the extension would be on these obligations, and asks whether the license term should also be extended where a receiving party’s final construction deadline is coincident with renewal.

12. *Spectrum Transfers.* The *Notice* asks what, if any, rule changes may be necessary relating to transfers of spectrum to allow covered small carriers to obtain spectrum through partitioning, disaggregation, or lease arrangements. In particular, the *Notice* seeks comment on whether reduced or modified performance requirements or extended performance deadlines would aid and increase the successful build out by covered small carriers who obtain spectrum through partitioning, disaggregation, or lease arrangements. Further, in light of Section 616’s requirement that the Commission consider the administrative feasibility of special conditions for covered small carriers, the *Notice* seeks comment on the costs and benefits of any proposed changes or conditions.

13. *Incentives to Encourage Lease or Sale.* In light of Section 616’s requirement that the Commission consider incentives that might encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas, the *Notice* seeks comment on what, if any, incentives may be appropriate to meet this objective, and how these potential incentives may impact the recordkeeping and compliance obligations of covered small carriers. In particular, the *Notice* seeks comment on whether and how modified performance requirements or longer license terms might encourage more licensees to sell or lease their spectrum rights; specific costs and benefits of any incentives; whether to pair reduced performance requirements with increased oversight; whether a minimum set of performance requirements would be necessary to ensure adequate buildout; and whether there should be increased penalties if performance requirements are not met. Additionally, the *Notice* seeks comment on whether allowing spectrum “reaggregation” for spectrum that has been partitioned or disaggregated on the secondary market—up to the size of the original market area—would help incentivize more parties to lease or sell spectrum. If spectrum reaggregation were allowed, the *Notice* asks what safeguards the Commission should put in place to prevent entities from using the process as a way of “laundering” their regulatory obligations. It also asks whether the Commission should require that licensees meet renewal requirements and continuity of service obligations with respect to the reaggregated spectrum, and if so, what measures the Commission should put in place to ensure that licensees comply with these requirements. The *Notice* further asks what filings and/or showings the licensee could be required to make to expedite Commission review.

14. While the Commission is not currently in a position to determine whether, if adopted, the potential rule changes that could result from questions raised in the *Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals, and cannot quantify the cost of compliance with the potential rule changes that could be adopted, it does not believe that the costs and/or administrative burdens associated with any of the potential rule changes will unduly burden small entities. In the discussion of these potential rule changes, the Commission has sought comments from parties in the proceeding, including seeking cost and benefit analyses. These may help the Commission identify and evaluate other relevant matters, including compliance costs and burdens on small entities that may result from the matters explored in the *Notice*.

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

15. 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 rule for 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 small entities.”²⁸

16. In the *Notice*, the Commission has raised alternatives to facilitate changes that would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers—such as allowing additional time to meet performance obligations under certain circumstances. The Commission has also sought to identify and target for removal procedural and substantive barriers impacting covered small carriers relating to partitioning, disaggregating, or leasing spectrum. In addition, the Commission has raised questions to address what conditions may be needed to eliminate impediments to transfers of spectrum to covered small carriers to allow them to build out in a reasonable period of time, and identify what incentives may encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas.

17. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*, including costs and benefits analyses, and this IFRA. The Commission’s evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

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

18. None.

²⁸ 5 U.S.C. § 603(c)(1)-(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38

The recent Netflix series, “Tidying Up with Marie Kondo,” has launched a phenomenon as Americans embrace Marie’s special way of keeping a tidy home. A key to the KonMari method is effectively managing your possessions by keeping only those that “spark joy.” For the FCC, spectrum that is being put to productive use sparks joy. Spectrum that lies fallow does not. That’s why we allow license holders to partition, disaggregate, or lease spectrum so more of it can be more easily used.

To ensure we do that as effectively as possible, today’s *Notice* tees up many questions regarding the Commission’s partitioning and disaggregation rules (which allow a spectrum license to be broken up into smaller pieces), as well as our leasing rules. We’re aiming to figure out whether any changes to those rules would help small carriers and wireless Internet service providers get better access to spectrum, such as by encouraging spectrum licensees to lease or sell spectrum to small companies serving rural areas. Additionally, in order to fulfill our obligations under the MOBILE NOW Act, we seek comment on whether a change to performance requirements could help rural telecommunications services and smaller providers. And we’re also looking at how reaggregating previously separated licenses might encourage deployment of additional services. In short, we want to explore ways to improve wireless access in parts of this country—and I’ve seen many of them—that too often are on the wrong side of the digital divide. I’m looking forward to reviewing the record on these questions to find the appropriate way forward. And I do hope it sparks joy, of course.

Many thanks to the staff who worked on this item: Lloyd Coward, Anna Gentry, Jessica Greffenius, Kathy Harris, Jessica Hynosky, Roger Noel, Becky Schwartz, Dana Shaffer, Don Stockdale, Cecilia Sulhoff, and Suzanne Tetreault from the Wireless Telecommunications Bureau; Judith Dempsey, Catherine Mataves, Giulia McHenry, and Emily Talaga from the Office of Economics and Analytics; Chana Wilkerson from the Office of Communications Business Opportunities; and David Horowitz, Doug Klein, and Bill Richardson from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38

I approve today's notice seeking input on how the Commission's secondary market policies can increase deployment in rural areas and facilitate the ability of small wireless providers to access spectrum. Congress required that we conduct – and I wholeheartedly support – such a review.

By way of background, the Commission has policies in place to facilitate secondary market transactions. Licenses can be sold or leased, in whole or in part, with overnight approval for many of the applications and notices for such deals. In fact, the Commission has conducted similar reviews in the past, which resulted in the introduction of leasing and expedited processing where appropriate. While the Commission has streamlined its procedures and provided flexibility under our rules to facilitate deals in rural America and to get spectrum into the hands of small businesses, many still assert that a vibrant secondary market, involving rural and small entities, has not developed.

The most common obstacle involves the simple fact that, often, it just isn't worth a current licensee's time to consider a small deal. Basically, the cost of negotiations and paperwork can outweigh the economic gains for spectrum in a more remote area. Therefore, our conversation must focus on how to reduce such burdens so that those with some excess spectrum in less populated areas are willing to enter into transactions. Not an easy task, I admit.

While the notice offers some ideas, they are far from likely to open the secondary market floodgates. I am somewhat skeptical that reducing performance requirements, providing some additional time for construction, or extending the license terms for operators that lease or sell spectrum will make a substantial difference. Regardless, I am more than happy to engage with interested parties on any of these ideas and others that they may have.

Ultimately, I hope industry will take this opportunity to think out of the box about ways – including approaches requiring Commission action or industry best practices – to meaningfully lower transaction costs and time spent so that those with spectrum are truly incentivized to execute the requisite deals. One way to reduce costs and hasten deal making could be to create a database or exchange that contains operator-approved contracts and available spectrum – an operational template, if you will. If an entity is willing to accept a contract as is, it could be submitted to the operator electronically, reducing prolonged back-and-forth negotiations and the requisite legal work. But, I recognize that it will likely take some greater effort to get license holders to participate and use advanced technologies that can inherently automate, record, and execute deals without emotion or competitive concerns and that hold interesting possibilities.

I thank the Chairman and Congress for starting this important discussion, but this proceeding will only be as good as the thought that goes into it. I hope wireless providers – big and small, urban and rural – really take the time to consider this issue and provide creative solutions.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38

A few months ago, I had the chance to meet Whitney from Lambert, Montana. Her family runs a farming and ranching operation in the northeast corner of Big Sky Country. The area is famous for being the farthest place in the country from a Starbucks. It's about 190 miles to the closest green-aproned barista. A run to the grocery store is a 100-mile drive round trip. The nearest big city, Billings, is five and a half hours away.

Yet Whitney is an Instagram star. She makes money by using her smartphone to produce and upload what have become viral videos. She calls one of her more famous videos "CrossFit for Cows,"²⁹ and it's been viewed millions of times. It shows Ghost, one of her 1,200 pound Herefords, rolling a straw bale across a snow-covered field. Whitney can get 4G LTE when she's in the field because there's a cell tower not far away that was put up to cover a highway that runs through the area. But there are still too many people in rural America that can't get a 4G LTE signal.

And that is why the FCC is working on a number of fronts to help close this digital divide. We have allocated up to \$4.5 billion to bring 4G LTE to more Americans. We have streamlined broadband infrastructure rules. And we have sought comment on expanding the FCC's existing geographic coverage requirements.³⁰

Today, we tee up another option for increasing wireless service in rural America. As required by Congress in the MOBILE NOW Act, we seek comment on how our spectrum leasing and related rules can help promote wireless deployment in areas that might otherwise go unserved.

Now, everyone may not have the same social media skills as Whitney, but they should at least have the same opportunity at next-gen connectivity. So I support today's *Notice*, and I look forward to working with my colleagues on these important issues.

²⁹ <https://twitter.com/DirtRoadDreamr/status/686318702980141057>.

³⁰ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8911-18, paras. 100-23 (2017) (seeking comment on extended, renewal term service obligations).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38

In 2015, Senator Klobuchar and Senator Fischer introduced bipartisan legislation to improve universal service by extending the reach of wireless broadband in rural communities. They proposed to do this by providing incentives for wireless carriers to partition, disaggregate, and lease unused spectrum to smaller carriers serving rural areas. This rulemaking builds on their proposal, which was featured in appropriations legislation from last year. To this effort, I offer my full support.

I also offer my optimism. That's because at its core, universal service is the principle that no matter who you are or where you live you need access to modern communications to have a fair shot at 21st century success. This is a sacred responsibility under the law. But we all know that the tools this agency is using have not been sufficient to get the job done. Millions of Americans still lack access to affordable broadband, especially in rural communities. So it's a positive step that through this proceeding we evolve our thinking about universal service and recognize that spectrum policy tools can help bring advanced communication to remote areas.

Now here's the next step we should take if we want to be successful. The partitioning, disaggregation, and leasing contemplated here will work better if our secondary markets can operate with full information. Today, the place to go for information about who owns spectrum and who might sell or lease it is our Universal Licensing System. But this database is opaque. It's not user friendly. Moreover, it will only grow more complex and harder to use as we divide and divvy up licenses as contemplated here. So I believe as we move forward with this proceeding, we need in parallel a proceeding that will improve this database and increase the transparency of spectrum ownership. I hope my colleagues agree—and I look forward to making it happen.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38

Two weeks ago, on my first visit outside the beltway as an FCC Commissioner, I traveled to Kansas City, Missouri, along with Congressman Emanuel Cleaver, who represents Missouri's Fifth District. We were eager to learn more about the work being done on the ground to help close the digital divide in Kansas City and how we, in Washington, could help facilitate, support and amplify those efforts.

Among many stops, I attended a meeting of the Kansas City Coalition for Digital Inclusion, a group formed for the singular purpose of addressing the digital divide in Kansas City. Comprised of representatives from area nonprofits, government entities, and businesses, as well as individuals, the group is "focused on fostering internet access and digital readiness in greater Kansas City." Missouri ranks 41st in the U.S. in connectivity and internet access, so it is abundantly clear that when it comes to ensuring every American can benefit from the transformative power of robust and affordable broadband, we have our work cut out for us, in Missouri and across the nation.

To that end, I welcome any and all ideas that show promise in helping us bridge the digital divide. I am pleased to support today's item, which fulfills Congress' directive in the MOBILE NOW Act and explores how potential changes to the Commission's partitioning, disaggregation, and leasing rules would increase small carriers' access to spectrum, expand the availability of broadband in rural areas, and advance our collective goal of closing the digital divide. I look forward to reviewing the record that develops in this proceeding and challenge stakeholders to put forward their best and most innovative ideas.

My thanks to the Wireless Telecommunications Bureau for your important work on this item.