



December 5, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, 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

Dear Ms. Dortch,

On December 1, 2017, Kara Romagnino Graves of CTIA spoke by phone with Kathy Harris of the Wireless Telecommunications Bureau to discuss the above-captioned proceeding. As discussed on the call, CTIA supports the Commission's Draft Order in this proceeding, which repeals two outdated rules governing the wireless radio services.¹ As the Commission recognizes, existing Sections 20.7 and 20.9—which designate particular services as either commercial mobile radio services (subject to common carrier regulation), or private mobile radio services—was adopted “more than twenty years ago, when the Commission's rules for particular spectrum bands typically contemplated distinct wireless services in each band.”² Today, however, the Commission takes a more flexible approach to its licensing rules, allowing providers to more quickly respond to competitive forces and changing consumer needs. The Draft Order correctly recognizes this trend toward regulatory flexibility and ends the disparate treatment of similar services in different frequency bands. CTIA supports this approach, which will not only harmonize the requirements for wireless licensing, but will further the Commission's goal of eliminating outdated and unnecessary regulatory mandates.

As further discussed on the call, CTIA urges the Commission to make one additional confirming edit to the Draft Order consistent with its objectives in this proceeding. The Draft

¹ *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, FCC-CIRC1712-05* (rel. Nov. 22, 2017) (“Draft Order”).

² *Id.* ¶ 2.



Order appropriately makes “corrective edits” to Sections 4.3 and 9.3 of the rules to align them with the flexible use approach toward wireless licensing.³ The Commission should make similar such corrective edits to Section 1.907 as well.

Section 1.907 contains definitions that apply to the Part 1 rules in Subpart F (Sections 1.900 *et seq.*) governing wireless radio applications and proceedings. Section 1.907 states that “wireless telecommunications services” “include[] all radio services authorized by parts 20, 22, 24, 26, 27 and 30 of this chapter,” and that these services are “subject to regulation on a common carrier basis.” Yet a Part 27 licensee, for example, can choose to provide private, non-common carrier, and/or common carrier services.⁴ CTIA therefore recommends that Section 1.907 be amended to conform with the Draft Order’s decision to repeal Sections 20.7 and 20.9 and to conform other rules to the decision to embrace the flexible licensing scheme.

Specifically, CTIA recommends that the Commission add the following sentence to paragraph 28 of the Draft Order:

Similarly, we make corrective edits to Section 1.907, which contains definitions applicable to our rules governing wireless applications and procedures in 47 CFR Part 1 Subpart F. These edits, like those we are making to Sections 4.3 and 9.3, will align our rules with the flexible use framework governing the wireless radio services today.

The Commission should also incorporate into the Draft Order revisions to two definitions in Section 1.907 by deleting the following language:⁵

Private Wireless Services. Wireless Radio Services ~~authorized by parts 80, 87, 90, 95, 96, 97, and 101~~ that are not Wireless Telecommunications Services, as defined in this part.

Wireless Telecommunications Services. Wireless Radio Services, whether fixed or mobile, that meet the definition of “telecommunications service” as defined by 47 U.S.C. 153, as amended, and are therefore subject to regulation on a common carrier basis. ~~Wireless Telecommunications Services~~

³ *Id.* ¶ 28.

⁴ See 47 C.F.R. § 27.10.

⁵ Section 1.907’s definition for “Wireless Radio Services” does not need to be amended, as it simply lists all rule parts that authorize wireless services; it does not circumscribe any rule part as exclusively common carrier or private services.



~~include all radio services authorized by parts 20, 22, 24, 26, 27, and 30 of this chapter. In addition, Wireless Telecommunications Services include Public Coast Stations authorized by part 80 of this chapter, Commercial Mobile Radio Services authorized by part 90 of this chapter, common carrier fixed microwave services, Local Television Transmission Service (LTTS), Local Multipoint Distribution Service (LMDS), and Digital Electronic Message Service (DEMS), authorized by part 101 of this chapter, and Citizens Broadband Radio Services authorized by part 96 of this chapter.~~

The Commission can make these conforming, non-substantive changes to Section 1.907 consistent with the Administrative Procedure Act ("APA"). The conforming edits to Section 1.907 are a logical outgrowth of this proceeding, making them exempt from notice and comment requirements.⁶ As courts and the Commission have recognized, "an agency need not initiate a new notice-and-comment period as long as the rule it ultimately adopts is a 'logical outgrowth' of the initial notice."⁷ A decision is a "logical outgrowth" if "interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice and comment period."⁸ Given that the stated purpose of this proceeding is to update outdated rules to align with the Commission's trend toward flexible licensing frameworks, making conforming changes to Section 1.907 meets the logical outgrowth standard.

Moreover, under the APA's "good cause" exception, an agency is not required to follow the notice and comment procedures if it finds that doing so is "impracticable, unnecessary, or contrary to the public interest."⁹ The exception is applicable to "situations in which the administrative rule is a routine determination, insignificant in nature and impact,

⁶ See, e.g., *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 445-46 (D.C. Cir. 1991).

⁷ *Ad Hoc Telecommunications Users Committee, et al., v. Federal Communications Commission and the United States of America*, Opinion (rel. Sept. 17, 2008) (citing *Crawford v. FCC*, 417 F.3d 1289, 1295 (D.C. Cir. 2005); *Long Island Care at Home, Ltd. v. Coke*, 127 S.Ct. 2339, 2351 (2007); *National Mining Ass'n v. Mine Safety and Health Admin.*, 512 F.3d 696, 699 (D.C. Cir. 2008)).

⁸ *Id.* (citing *American Coke and Coal Chemicals Institute v. EPA*, 452 F.3d 930, 962-63 (D.C. Cir. 2006); *Owner-Operator Independent Drivers Ass'n, Inc. v. Federal Motor Carrier Safety Admin.*, 494 F.3d 188 (D.C. Cir. 2007)).

⁹ 5 U.S.C. §553(b)(3)(B).



and inconsequential to the industry and to the public.”¹⁰ The Commission has applied this exception in the past to make non-substantive, conforming changes to existing rules.¹¹ The limited changes to Section 1.907 meet this standard because they merely correct that section to align it with the other rules being deleted or amended. No party will be burdened by these changes, which simplify and streamline existing wireless rules.

Pursuant to Section 1.1206(b) of the Commission’s rules, a copy of this letter is being electronically submitted into the record of this proceeding. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Kara Romagnino Graves

Kara Romagnino Graves
Director, Regulatory Affairs

¹⁰ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713, 14778 n. 445 (2015) (citing *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001)).

¹¹ *Id.* at 14763 n. 339, 14779-80 (adopting a non-substantive amendment to Section 25.218 of its rules without prior notice or opportunity to comment, modifying a definition in other sections of the Commission’s rules, and “mak[ing] other conforming changes to reflect this definition”); see also, e.g., *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service*, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, WT Docket No. 12-40, 32 FCC Rcd 2518, 2560 (2017) (revising Section 22.953(c), even though it had not raised this section of the rules in its 2014 rulemaking notice).