



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 21-232, EA Docket No. 21-233; FCC 21-73; FR ID 39522]

Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program and the Competitive Bidding Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to revise rules related to its equipment authorization processes to prohibit authorization of any “covered” equipment on the recently established Covered List. The Commission also seeks comment on whether to require additional certification relating to national security from applicants who wish to participate in the Commission’s competitive bidding auctions. This action explores steps the Commission can take to further its goal of protecting communications networks from communications equipment and services that pose a national security risk.

DATES: Comments are due [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Reply comments are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by ET Docket No. 21-232, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

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

People with disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Office of Engineering and Technology, 202-418-2705, Jamie.Coleman@fcc.gov. For information regarding the PRA information collection requirements contained in this PRA, contact Nicole Ongele, Office of Managing Director, at (202) 418-2991 or Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM), in ET Docket No. 21-232 and EA Docket No. 21-233; FCC 21-73, adopted and released June 17, 2021. The full text of this document is available by downloading the text from the Commission’s web site at: <https://www.fcc.gov/document/equipment-authorization-and-competitive-bidding-supply-chain-nprm>. When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554.

Initial Paperwork Reduction Act of 1995 Analysis:

This document contains proposed 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. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. 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.

OMB Control Number: 3060-0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form No.: FCC Form 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 11,305 respondents; 24,873 responses.

Estimated Time Per Response: 8.11 hours (rounded).

Frequency of Response: On occasion and one-time reporting requirements; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312, and 316, and 47 CFR 1.411.

Total Annual Burden: 206,863 hours.

Total Annual Costs: \$ 50,155,140.

Privacy Act Impact Assessment: Yes. The personally identifiable information (PII) in this information collection is covered by a Privacy Impact Assessment (PIA), Equipment Authorizations Records and Files Information System. It is posted at: <https://www.fcc.gov/general/privacy-act-information#pia>.

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. The Commission is reporting program changes, increases to this information collection.

On June 17, 2021, the Commission adopted a Notice of Proposed Rulemaking and Notice of Inquiry in ET Docket No. 21-232 and EA Docket No. 21-233, FCC 21-73, “*Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program.*” Among other proposed rules intended to secure our nation’s telecommunications networks, the Commission proposes to amend the 47 CFR Part 2 rules related to equipment authorization to prohibit the authorization of communications equipment if the Commission determines that such equipment or service poses an unacceptable risk to the national security of the United States or the security and safety of United States persons. Accordingly, the Commission proposes to add § 2.911 to its rules, 47 CFR 2.911. The statutory authority for this collection of information is authorized under sections 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312, and 316.

***Ex Parte* Rules—Permit-But-Disclose**

The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda

summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. INTRODUCTION

In this Notice of Proposed Rulemaking (NPRM), the Commission proposes revisions to its equipment authorization rules and processes to prohibit authorization of any communications equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Secure and Trusted Communications Networks Act of 2019, Pub. L. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609) (*Secure Networks Act*). This prohibition would apply to “covered” equipment on the Covered List maintained and updated by the Commission's Public Safety and Homeland Security Bureau (PSHSB) at <https://www.fcc.gov/supplychain/coveredlist>. The Commission also seeks comment on whether the rules concerning equipment currently exempted from the equipment authorization requirement should be revised to ensure that any “covered” equipment cannot qualify for such exemption. In addition, the Commission seeks comment on whether to revoke any of the authorizations that have been previously granted for “covered” equipment on the Covered List, and if so, which ones and through what procedures.

Finally, the Commission seeks comment on new certifications for applicants that wish to participate in Commission auctions that would further address the risks posed by companies that the Commission has designated as posing a national security threat to the integrity of communications networks and the communications supply chain.

II. BACKGROUND

The Covered List. On March 21, 2021, PSHSB published the Covered List identifying the covered equipment and services that specific, enumerated sources have deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. “Public Safety and Homeland Security Bureau Announces Publication of the List of Equipment and Services Covered by Section 2 of the Secure Networks Act,” WC Docket No. 18-89, Public Notice, DA 21-309 (PSHSB, Mar. 12, 2021) (*Covered List Public Notice*); see 47 CFR 1.50002. Pursuant to 47 CFR 1.50002, this Covered List identified certain telecommunications equipment and services produced or provided by Huawei Technologies Company and ZTE Corporation, and video surveillance and telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company — and their respective subsidiaries and/or affiliates. The Commission tasked PSHSB with ongoing responsibilities for monitoring the status of the determinations and periodically updating the Covered List to address changes as appropriate.

The equipment authorization program. The Commission’s current rules provide two different approval procedures for equipment authorization – Certification of equipment and Supplier’s Declaration of Conformity (SDoC). As a general matter, for a radiofrequency device (RF device) to be marketed or operated in the United States, it must have been authorized for use through one of these two processes. Some RF equipment has been exempted from the need for an equipment authorization. At this time, the Commission’s current equipment authorization rules do not include specific provisions addressing the “covered” equipment on the Covered List.

Competitive bidding certifications. The Commission uses competitive bidding to determine which among multiple applicants with mutually exclusive applications for a license may file a full application for the license. Congress gave the Commission the authority to require such information and

assurances from applicants to participate in competitive bidding as is necessary to demonstrate that their application is acceptable. Pursuant to this authority, the Commission has required each applicant to participate in competitive bidding to make various certifications.

III. DISCUSSION

In this NPRM, the Commission examines its rules relating to equipment authorization and participation in Commission auctions to help advance the Commission's goal of protecting national security and public safety. This proceeding builds on other actions the Commission recently has taken to protect and secure our nation's communications systems.

In other proceedings over the last three years, the Commission has taken several actions to prevent use of equipment and services that pose an unacceptable risk to our nation's communications networks. In June 2020, the Public Safety and Homeland Security Bureau (PSHSB) designated Huawei and ZTE as national security threats to the integrity of communications networks, prohibiting the use of Universal Service Fund (USF) support to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by Huawei and ZTE. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020) (*Huawei Designation Order*); *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020) (*ZTE Designation Order*). Most recently, PSHSB, as required by the December 2020 Supply Chain Second Report and Order (*Supply Chain Second Report and Order*, 35 FCC Rcd 14284), published the Covered List, which identifies "covered" equipment and services that pose an unacceptable risk to national security or to the security and safety of U.S. persons. *Covered List Public Notice*; see 47 CFR 1.50002. PSHSB will continue to update that list as appropriate. Although the Commission, through PSHSB, publishes and updates the Covered List, the equipment and services included on the list are identified by specific external sources enumerated in the Secure Networks Act. 47 CFR 1.50002(b)(1)(i)-(iv).

This Covered List identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The

Commission is required to include communications equipment and services on the list based exclusively on determinations made by Congress and by other U.S. government agencies. 47 U.S.C. 1601(c).

Currently, the list includes equipment and services produced or provided by five entities:

“Telecommunications equipment produced or provided by” Huawei Technologies Company or ZTE Corporation, or their respective subsidiaries and affiliates, “including telecommunications or video surveillance services produced or provided by such [entities] or using such equipment;” and “Video surveillance and telecommunications equipment produced or provided by” Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or their respective subsidiaries and affiliates, “to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, including telecommunications or video surveillance services produced or provided by such [entities] or using such equipment.” *Covered List Public Notice* at 3. (As noted in this Public Notice, where equipment or services on the list are identified by category, such category should be construed to include only equipment or services capable of the functions outlined in sections 2(b)(2)(A), (B), or (C) of the Secure Networks Act. 47 U.S.C. 1601(b)(2)(A)-(C)). Under the Secure Networks Act and the Commission’s new rule, part 1, subpart DD, inclusion of equipment and services on the Covered List precludes the use of federal subsidy funds – e.g., funds from the Commission’s Universal Service Programs – to obtain or maintain such equipment or services. 47 U.S.C. 1602; 47 CFR 1.50000 *et seq.*; *see Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7825-28, paras. 16-22 (2020).

This NPRM seeks comment on various steps that the Commission could take in its equipment authorization program, as well as its competitive bidding program, to reduce threats posed to our nation’s communications system. The Commission proposes revisions to its equipment authorization rules and procedures under part 2 to prohibit authorization of any “covered” equipment on the Covered List. It also seeks comment on whether to revise the rules on equipment currently exempted from the equipment authorization requirements to no longer permit this exemption for such “covered” equipment. In addition, it seeks comment on whether the Commission should revoke equipment authorizations of “covered”

equipment, and if so under what conditions and procedures. Finally, we include questions concerning possible revisions to the Commission’s competitive bidding procedures that could address certain concerns related to “covered” equipment and services. Notably, the Commission must “periodically update the list . . . to address changes in [external] determinations . . . [and] shall monitor the making and reversing of determinations . . . in order to place additional communications equipment or services on the list . . . or to remove communications equipment and services from such list.” Secure Networks Act § 2(d)(1)-(2); *see also* 47 CFR 1.50003. If one of the enumerated sources named in the Secure Networks Act modifies or deletes a determination, PSHSB will do the same and modify the Covered List accordingly. *See* 47 CFR 1.50003(b) (if a determination regarding covered communications equipment or service on the Covered List is reversed or modified, directing PSHSB to remove from or modify the entry of such equipment or service on the Covered List, except if any of the sources identified in 47 CFR 1.50002(b)(1)(i)-(iv) maintains a determination supporting inclusion of such equipment or service on the Covered List). The Commission seeks comment on how future updates to the Covered List should affect our proposals in this Notice.

A. Equipment Authorization Rules and Procedures

In this Notice, the Commission proposes revisions to the Commission’s equipment authorization rules and processes to prohibit authorization of any “covered” equipment on the Covered List. This prohibition would apply to “covered” equipment on the Covered List maintained and updated by PSHSB. The Commission also seeks comment on whether its rules concerning equipment currently exempted from the equipment authorization requirement should be revised to ensure that any “covered” equipment cannot qualify for such exemption. In addition, it seeks comment on whether it should revoke any of the authorizations that have been previously granted for “covered” equipment on the Covered List, and if so, which ones and through what procedures. Finally, it seeks comment on new certifications for applicants that wish to participate in Commission auctions that would further address the risks posed by companies that the Commission has designated as posing a national security threat to the integrity of communications networks and the communications supply chain.

1. Equipment Authorization Rules Under Part 2

a. General Provisions of Subpart J

The Commission's equipment authorization rules and procedures, set forth in 47 CFR part 2, include requirements and processes for equipment marketing, authorization, and importation. The Commission proposes to adopt a new provision, 47 CFR 2.903, as part of the "General Provisions" of subpart J, to provide general guidance regarding the prohibition on equipment authorizations with respect to communications equipment on the Covered List. In proposing this new rule section, the Commission seeks to establish a clear prohibition on authorization of any "covered" equipment in the Commission's equipment authorization processes regardless of the process to which that equipment is subject. The Commission seeks comment on this proposed rule. Is this rule sufficient to prohibit any such equipment on the Covered List from being authorized for use in the United States? What modifications or clarifications are needed to this proposed language to ensure that the rule is clear as to its scope and effect and attains results commensurate with its purpose to protect national security? Are there additional provisions that should be included here to more fully capture the scope of the Commission's proposed prohibition?

If the Commission were to adopt this proposal to revise the Commission's subpart J equipment authorization rules to prohibit any further authorization of "covered" equipment through the certification or SDoC processes, this decision would also serve to prohibit the marketing of such equipment that would now be prohibited from authorization under subpart I of the Commission's part 2 rules (Marketing of Radio-Frequency Devices) and importation of equipment under subpart K (Importation of Devices Capable of Causing Harmful Interference) of the Commission's part 2 rules. Section 2.803(b) of subpart I only permits persons to import or market RF devices that are subject to authorization under either the certification or SDoC process, as set forth in the Commission's subpart J rules, once those devices have been authorized, unless an exception applies. Similarly, the Commission's proposed revisions in subpart J also would serve to prohibit importing or marketing of "covered" equipment if it is subject to authorization through either the certification or SDoC process in subpart J and has not been authorized, per sections 2.1201(a) and 2.1204(a). The Commission seeks comment on the need to revise or provide clarification with regard to how the Commission's proposed prohibition of authorization of "covered"

equipment affects the implementation of the Commission's rules in either subpart I or subpart K. Would the general prohibition the Commission proposes for equipment subject to certification and SDoC make any changes to subparts I or K unnecessary? If not, what changes are needed to the Commission rules in those subparts?

The Commission seeks comment on other revisions that it should make regarding equipment authorization either through the certification or SDoC rules and procedures. The Commission discusses and seeks comment on how the proposed rule should be implemented with respect to each of these processes, and whether other rule revisions or clarifications are appropriate. While the vast majority of RF devices are subject to either certification or an SDoC under the rules in subpart J, there is a limited category of devices that are exempt from these authorization processes. The Commission also seeks comment on how best to address this equipment.

b. Certification Rules

Background. As described in brief above, under the Commission's equipment authorization rules, certain radiofrequency devices that have the greatest potential to cause harmful interference to radio services, must be processed through the equipment certification procedures. Certification generally is required for equipment that consists of radio transmitters as well as some unintentional radiators. Examples of equipment that requires certification include mobile phones, wireless provider base stations, point-to-point and point-to-multipoint microwave stations, land mobile, maritime and aviation radios, remote control transmitters, wireless medical telemetry transmitters, Wi-Fi access points and routers, home cable set-top boxes with Wi-Fi, and most wireless consumer equipment (e.g., tablets, smartwatches and smart home automation devices). Applicants are required to file with an FCC-recognized Telecommunication Certification Body (TCB) applications containing specified information. *See* 47 CFR §§ 2.907 (Certification), 2.911-926 (Applications), 2.960-964 (Telecommunication Certification Bodies), 2.1031-1060 (Certification). Each applicant is required to provide the TCB with all pertinent information as required by the Commission's rules. *See, e.g.,* 47 CFR 2.911(d), 2.1033(a). These requirements generally specify the information necessary to document compliance with the testing requirements that broadly apply to RF devices used under authority of the Commission, including devices used under licensed radio services and devices used on an unlicensed basis. Additional application information is

required to demonstrate compliance with specific technical requirements in particular service rules (e.g., that antennas on certain unlicensed part 15 devices are not detachable (47 CFR 15.203) or that certain part 90 private land mobile transmitters meet required efficiency standards (47 CFR 90.203(j))) or other broadly applicable policy-related Commission requirements (e.g., compliance with the Anti-Drug Abuse Act (47 CFR 1.2002; 2.911(d)(2))). By signing the application for equipment authorization (FCC Form 731), each applicant attests that the information provided in all statements and exhibits pertaining to that particular equipment are true and correct. The TCB then makes a determination as to whether to grant an equipment certification based on evaluation of the submitted documentation and test data. The Commission, through OET, oversees the certification application process, and provides guidance to applicants, TCBs, and test labs through its pre-approval guidance (including its knowledge database system (KDB)) with regard to required testing and other information associated with certification approval procedures and processes. Applications that involve new technology or for which there are no FCC-recognized test procedures require a TCB to obtain pre-approval guidance from the Commission before the application may be approved. 47 CFR 2.964. Once a TCB makes a determination, either on its own or after consultation with the Commission, to grant an equipment certification, information about that authorization is publicly announced “in a timely manner” through posting on the Commission-maintained Equipment Authorization System (EAS) database, and referenced via unique FCC identifier (FCC ID). Once this original certification is granted, the device is subject to rules that specify requirements: for modifying equipment, marketing under or changing FCC ID, and transferring ownership of an FCC ID.

The Commission’s part 2 rules also include various provisions that help ensure that equipment certifications comply with Commission requirements. The Commission is authorized to dismiss or deny an application where that application is not in accordance with Commission requirements or the Commission is unable to make a finding that grant of the application would serve the public interest. The rules also provide that the TCB or Commission may set aside a certification within 30 days of grant if it determines that the equipment does not comply with necessary requirements. The rules also require the TCB to perform “post market surveillance” of equipment that has been certified, with guidance from OET, as may be appropriate. Revocation of an existing equipment authorization is also authorized for

various reasons, including for false statements and representations in the application. And an authorization may be withdrawn if the Commission changes its technical standards.

Discussion. The Commission proposes certain additional revisions to the Commission's rules and processes regarding equipment certification. In proposing to revise the Commission equipment certification rules, the Commission goal is to design a process that efficiently and effectively prohibits authorization of "covered" equipment without delaying the authorization of innovative new equipment that benefits lives.

The Commission proposes revising the equipment certification application procedures to include a new provision in section 2.911 that would require applicants to provide a written and signed attestation that, as of the date of the filing of the application, the equipment for which the applicant seeks certification is not "covered" equipment on the Covered List. Specifically, any applicant for certification would attest that no equipment (including component part) is comprised of any "covered" equipment, as identified on the current published list of "covered" equipment. This new provision also would cross-reference section 1.50002 of the Commission's rules that pertain to the Covered List. The Commission seeks comment on this proposal. The Commission also invites comment on particular language that should be included in this attestation. For instance, to what extent should the Commission consider basing this attestation language on the certifications that providers of advanced communications services must complete to receive a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services? Are there additional compliance measures beyond the attestation that the Commission should consider? Should the applicant have an ongoing duty during the pendency of the application to monitor the list of covered equipment and provide notice to the TCB or the Commission if, subsequent to the initial filing of the application or at the time a grant of certification, the equipment or a component part had become newly listed as "covered" equipment in an updated Covered List?

Section 2.1033 discusses information that must be included in the application. The Commission seeks comment on whether there are revisions that the Commission should adopt in this rule provision that would further clarify the Commission proposals regarding prohibition of the certification of any "covered" equipment. What information may be pertinent to assist the TCBs and the Commission in

ensuring that applications do not seek certification of “covered” equipment? Should the Commission require that the applicant provide certain information that would help establish that the equipment is not “covered” equipment to assist TCBs and the Commission in making determinations about whether to grant the application? For example, the Commission currently requires applicants to file block diagrams or schematic diagrams of their devices. 47 CFR 1.50002 (Covered List). Should the Commission also require a parts list noting the manufacturer of each part? If the Commission were to adopt such a requirement, should it apply to all or only certain components? Which ones? How much additional burden, if any, would this place on applicants as compared to the current level of effort needed to prepare an equipment certification application?

The Commission proposes to direct the Office of Engineering and Technology (OET) to develop guidance for use by interested parties, including applicants and TCBs, regarding the Commission’s proposed prohibition on certification of “covered” equipment. In particular, the Commission proposes to direct PSHSB, the Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau, the International Bureau, and the Enforcement Bureau to assist OET in developing pre-approval guidance that provides the necessary guidance that TCBs can use and should follow in implementing the proposed prohibition. PSHSB, which is tasked with publication of the Covered List, and has significant responsibilities and expertise regarding ensuring that the nation’s public safety communications networks are secure, can lend important assistance by collaborating with OET to provide such guidance. The Commission seeks comment on this proposal. The Commission also seeks comment on whether the current pre-approval guidance rule (or the use of KDBs) should be revised or clarified consistent with the Commission goals in this proceeding.

As the Commission has noted, following a TCB’s grant of certification, the Commission will post information on that grant “in a timely manner” on the Commission-maintained public EAS database. As the Commission has also noted, the TCB or Commission may set aside a grant of certification within 30 days of the grant date if it is determined that such authorization does not comply with applicable requirements or is not in the public interest. To what extent should interested parties, whether the public or government entities (e.g., other expert agencies) be invited to help inform the Commission as to whether particular equipment inadvertently received a grant by the TCB and is in fact (or might be)

“covered” equipment such that the grant should be set aside? Should the Commission consider adopting any new procedures for gathering and considering information on potentially relevant concerns that the initial grant is not in the public interest and should be set aside? Should such procedures be limited to certain parties (e.g., expert agencies), or certain minimal showings required by those that seek to raise questions about the grant?

Section 2.962(g) of the Commission’s current rules expressly provides for “post-market surveillance” activities with respect to products that have been certified. The Commission proposes to direct OET, in exercising its delegated authority, to provide TCBs with guidance on the kinds of post-market surveillance that should be conducted to help ensure that no equipment that subsequently has been authorized includes “covered” equipment that has not been authorized. Here, the Commission seeks comment on whether revisions or clarifications to the post-market surveillance requirements should be adopted. Under existing rules, each TCB is required to conduct type testing of samples of product types that it has certified. OET has delegated authority to develop procedures that TCBs will use for performing such post-market surveillance, including the responsibility for publishing a document on the post-market surveillance requirements that will provide specific information such as the numbers and types of samples the TCBs must test. OET may also request that a grantee of equipment certification submit a sample directly to the TCB that performed the original certification for its evaluation. TCBs also may request samples directly from the grantee. If in this post-market surveillance, the TCB determines that the product fails to comply with the technical regulation for that product, the TCB then notifies the grantee and the grantee must then describe actions taken to correct the situation. The TCB provides a report of these actions to the Commission within 30 days.

The Commission also seeks comment on how the rules should be implemented, or revised or clarified, to ensure that equipment users will not make modifications to existing equipment that would involve replacing equipment (in whole or part) with “covered” equipment. Should, for instance, the Commission revise or clarify its section 2.932 rules regarding modifications or the section 2.1043 provisions concerning “permissive changes,” to promote the Commission goals in this proceeding? The Commission also notes that section 2.929 of the equipment authorization rules includes provisions regarding changes in the name, address, ownership, or control of the grantee of an equipment

authorization. An equipment authorization may not be assigned, exchanged, or in any other way transferred to a second party, except as provided in this section. Should the Commission consider any revisions or clarifications about how these provisions apply in light of the Commission proposals regarding prohibition on authorization of “covered” equipment? For example, should the Commission prohibit the ownership or control of the certification for any equipment on the Covered List from being assigned, exchanged, or transferred to another party?

Under the Commission’s part 2 rules concerning equipment authorization, various provisions are included that help ensure that applicants and TCBs comply with their responsibilities related to the Commission’s equipment authorization procedures set forth in part 2 subpart J. The Commission notes, for instance, that pursuant to section 2.911(d)(1), applicants must provide a written and signed certification to the TCB that all statements in its request for equipment authorization are true and correct to the best of its knowledge and belief. TCBs, which are subject to the accreditation process, must comply with all applicable responsibilities set forth in the Commission part 2 rules for TCBs, and if the Commission were to adopt the proposal, would be obligated to prohibit the certification of any “covered” equipment. In reviewing the applications, TCBs would be required to dismiss any application should they become aware that an applicant has falsely asserted that its equipment (or components of the equipment) is not “covered” equipment. The Commission seeks comment on the implementation of these rules in the context of prohibiting certification of “covered” equipment, and any revisions or clarifications that may be appropriate to ensure that from this point forward applicants and TCBs comply with the proposed prohibition on authorization of “covered” equipment. Should the Commission’s existing rules or procedures concerning ensuring compliance be enhanced with respect to applicants that intentionally attempt to circumvent the rules or TCBs that repeatedly fail to meet their responsibilities to comply with the Commission proposed prohibition?

The Commission seeks comment on revisions that could better ensure that applicants comply with the proposed requirements. Under the Commission’s current equipment certification rules, the grantee of the certification is responsible for compliance of the equipment with the applicable requirements as the “responsible party,” as set forth in section 2.909(a). In 2017, the Commission revised the rules applicable to equipment authorized through the SDoC process (discussed below) to require that

the parties responsible under the SDoC rules for compliance of equipment authorized under those provisions must be located within the United States. 47 CFR 2.909(b); 2.1077(a)(3). Many certified devices are also manufactured outside of the United States, and there may be no party within the country other than the importer that the Commission could readily contact if the equipment is not compliant with the Commission's requirements. Accordingly, the Commission proposes adopting the same requirement previously adopted with regard to responsible parties in the SDoC process with regard to responsible parties associated with equipment authorized through the equipment certification process. The Commission seeks comment. Relatedly, the Commission has encountered difficulties in achieving service of process for enforcement matters involving foreign-based equipment manufacturers. Should the Commission also require that the applicant for certification of equipment include a party and/or an agent for service of process that must be located in the United States? How much additional burden, if any, would these requirements place on applicants as compared to the current level of effort needed to prepare an equipment certification application? Should the Commission impose a similar requirement on existing equipment certification grantees? If so, how would the Commission do so? If not, how should the Commission address the difficulty in obtaining service of process on certain foreign-based equipment manufacturers?

As discussed above, PSHSB will periodically publish updates to identify the "covered" equipment and services that are on the Covered List. Under the proposals, the Commission accordingly directs that OET expeditiously take all the appropriate steps (e.g., updating as necessary the precise certification that applicants must make that no newly identified "covered" equipment is associated with the application, as well as updating any pre-approval guidance, KDB, or other guidance) to reflect those updates, consistent with the rules and procedures that the Commission ultimately adopts regarding the certification rules in this proceeding. The Commission invites comment on appropriate means for OET to include updates of the "covered" equipment in an expeditious fashion in ways that best ensure that applicants, TCBs, and other interested parties will comply with the prohibitions concerning this updated identification of "covered" equipment.

Finally, the Commission seeks comment on whether there are other rule revisions or clarifications to the equipment certification rules and processes that the Commission should make consistent with the

goals to prohibit authorization of “covered” equipment. Commenters should explain their suggestions in sufficient detail, including the reasoning behind the suggestions and associated issues (e.g., implementation). While the proposed prohibition would be reflected in the Commission’s rules and the engagement with TCBs in ensuring compliance, the Commission also seeks comment on any other types of action or activity (e.g., outreach and education) that would be helpful to ensure that all parties potentially affected by these changes understand the changes and will comply the prohibition associated with “covered” equipment.

c. Supplier’s Declaration of Conformity (SDoC) rules

Background. The Supplier’s Declaration of Conformity (SDoC) process is available for many types of equipment that have less potential to cause RF interference. Under the Commission rules, the types of equipment that may be processed pursuant to the SDoC procedures include fixed microwave transmitters (e.g., point-to-point or multipoint transmitter links as well as some links used by carriers and cable operators) authorized under part 101, broadcast TV transmitters authorized under parts 73 and 74, certain ship earth station transmitters authorized under part 80 (Maritime), some emergency locator transmitters authorized under part 87 (Aviation), and private land mobile radio services equipment and equipment associated with special services such as global maritime distress and safety system, aircraft locating beacons, ocean buoys), certain unlicensed equipment (e.g., business routers, firewalls, internet routers, internet appliances, wired surveillance cameras, business servers, workstations, laptops, almost all enterprise network equipment, computers, alarm clocks) that includes digital circuitry (but no radio transmitters) authorized under part 15, certain ISM equipment (e.g., those that use RF energy for heating or producing work) authorized under part 18. The SDoC process differs significantly from the certification process for equipment authorizations, and relies on determinations about the equipment made by the party responsible for compliance (“responsible party” as defined in the rules) as to whether the equipment “conforms” with the Commission’s requirements. Using the more streamlined SDoC process for the equipment authorization is “optional” insofar as the responsible party may choose to apply for equipment certification through the equipment certification process even if SDoC is acceptable under the Commission rules.

In the SDoC process, the responsible party makes the necessary measurements and completes other procedures found acceptable to the Commission to ensure that the particular equipment complies with the appropriate technical standards for that device. The information provided with devices subject to SDoC must include a compliance statement that lists a U.S.-based responsible party. As set forth in the rules, the responsible party for equipment subject to the SDoC process could include the equipment manufacturer, the assembler (if the equipment is assembled from individual component parts and the resulting system is subject to authorization), or the importer (if the equipment by itself or the assembled system is subject to authorization), and could also include retailers and parties performing modification under certain circumstances. 47 CFR 2.909(b)(1)-(2); 47 CFR 2.909(b)(3)-(4). The SDoC signifies that the responsible party has determined that the equipment has been shown to comply with the applicable technical standards. Given the streamlined nature of this particular process, responsible parties are not typically required to submit to the Commission an equipment sample or representative data demonstrating compliance. Also, while the Commission rules require that the equipment authorized under the SDoC procedure must include a unique identifier, the equipment is not listed in a Commission equipment authorization database, they are required to retain records on the equipment that demonstrate the equipment's compliance with the Commission's applicable requirements for that equipment. 47 CFR 2.1074; 47 CFR 2.938. The Commission can specifically request that the responsible parties provide such information on particular equipment to the Commission. 47 CFR 2.906(a); 2.945(b)(1).

Discussion. The Commission proposes that any equipment produced or provided by any of the entities (or their respective subsidiaries or affiliates) that produce or provide "covered" equipment, as specified on the Covered List, can no longer be authorized pursuant to the Commission's SDoC processes, and the equipment of any of these entities would have to be processed pursuant to the Commission's certification rules and processes as proposed above. Accordingly, responsible parties would be prohibited altogether from using the SDoC process with respect to any equipment produced or provided, in whole or part, by these entities (or their respective subsidiaries or affiliates), and such equipment would be prohibited from utilizing the SDoC process. That is not to say that all equipment produced or provided by these entities currently subject to the SDoC process would be prohibited; as the Commission discussed above, under the current rules, responsible parties always have the option of

seeking equipment authorization through the Commission's equipment certification procedures. Under the Commission's proposed rules, responsible parties would now be required to use the certification procedures for any equipment produced or provided by these entities, as the option of using the SDoC processes would no longer be available. This proposal will help ensure consistent application of the Commission's proposed prohibition on further equipment authorization of any "covered" equipment by requiring use of only one process, which includes the Commission's more active oversight and proactive guidance when working directly with TCBs prior to any equipment authorization in the first place, and in guiding appropriate post-market surveillance after any equipment authorization. The Commission finds this approach consistent with the public interest.

The Commission seeks comment on the specific information that must be included in the SDoC compliance statement that will ensure that responsible parties do not use the SDoC process for "covered" equipment. This compliance statement would need to be sufficiently complete to require a responsible party to exercise necessary diligence with respect to the equipment that it is subjecting to the SDoC process that will ensure that it is attesting, in clear terms, that the equipment (or any component part thereof) is not produced or provided by any entity that has produced or provided "covered" equipment on the Covered List. This compliance statement should be crafted in such a manner as to assist responsible parties in identifying equipment that can no longer be processed through the SDoC process while also ensuring that responsible parties are held accountable, by their compliance statement, for any misrepresentations or violation of the prohibition that the Commission is proposing. The Commission notes that current rules require that the responsible party be located within the United States. 47 CFR 2.1077(a)(3). As discussed above regarding equipment subject to the certification process, should the Commission also require that the compliance statement include the name of a U.S. agent for service of process (if different from the responsible party)?

What steps should the Commission take to help inform responsible parties that use the SDoC process of this proposed prohibition, as well as the requirement that any equipment (including component parts) produced or provided by entities (and their subsidiaries and affiliates) that produce or provide "covered" equipment must be subject to the equipment certification process? The Commission notes that the rules allow many entities to take on the role of a responsible party under the part 2 rules, including

retailers and parties performing modifications to equipment. The Commission seeks comment on how best to ensure that all responsible parties that use the SDoC processes to enable importing or marketing of equipment in the United States will understand and comply with the Commission’s proposed revisions with respect to equipment produced or provided by entities that produce or provide “covered” equipment on the Covered List. What types of actions or activities (e.g., outreach and education) to equipment manufacturers, assemblers, importers, retailers, parties performing modification under certain circumstances, and others that serve as responsible parties and use the SDoC process regarding particular equipment would be advised and most helpful? Should the Commission impose a similar requirement with respect to existing authorizations obtained through the SDoC process? If so, how would the Commission do so? If not, how should the Commission address the difficulty of obtaining service of process on certain foreign-based equipment manufacturers?

As noted above, the Commission can specifically request that the responsible parties provide information on any equipment to the Commission that has been authorized through the SDoC process. Under the Commission’s proposal, in an effort to ensure that responsible parties are complying with the prohibition, the Commission would exercise its equipment authorization oversight, as appropriate, in requesting that the responsible parties provide information – e.g., an equipment sample, representative data demonstrating compliance, and the compliance statement itself – regarding particular equipment to the Commission. The Commission seeks comment on what kinds of situations in which such requests might be appropriate. What kinds of information might inform the Commission’s consideration as to whether any equipment may have been inappropriately processed through the SDoC process, thus triggering the Commission’s request for information from the responsible party to make sure that no violation of the Commission’s prohibition has occurred?

As the Commission has discussed, PSHSB will periodically publish updates to identify the “covered” equipment on the Covered List. As with the equipment certification proposals above, the Commission would direct that OET expeditiously take all the appropriate steps (e.g., updating as necessary the information that SDoC applicants must make to establish that no newly identified “covered” equipment is associated with the application to reflect those updates), consistent with the rules and procedures that the Commission ultimately adopts regarding the SDoC rules in this proceeding. The

Commission invites comment on appropriate means for OET to include updates of the “covered” equipment in an expeditious fashion in ways that best ensure that applicants, responsible parties, and other interested parties will comply with the prohibitions that the Commission has proposed.

Finally, the Commission seeks comment on whether there are other rule revisions or clarifications to the SDoC rules and processes that the Commission should make consistent with the goals to prohibit authorization of “covered” equipment. Commenters should explain their suggestions in sufficient detail, including the reasoning behind the suggestions and associated issues (e.g., implementation).

d. Legal authority

Adopting rules that take security into consideration in the equipment authorization process would serve the public interest by addressing significant national security risks that have been identified by this Commission in other proceedings, and by Congress and other federal agencies, and doing so would be consistent with the Commission’s statutory “purpose of regulating interstate and foreign commerce in communication by wire and radio ... for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.” 47 U.S.C. 151. The Commission tentatively concludes that doing so is not specifically authorized by the Secure Networks Act itself, pursuant to which the Commission adopted the Covered List. However, the Commission has broad authority to adopt rules, not inconsistent with the Communications Act, “as may be necessary in the execution of its functions.” 47 U.S.C. 154(i). The Commission believes that, in order to ensure that the Commission’s rules under the Secure Networks Act effectively preclude use of equipment on the Covered List by USF recipients as contemplated by Congress, it is necessary to rely on the Commission’s established equipment authorization procedures to restrict further equipment authorization, and the importation and marketing, of such devices in the first instance. As discussed above, the Commission also relies on the equipment authorization process to implement other statutory duties, including the duty to promote efficient use of the radio spectrum, the duties under the National Environmental Policy Act to regulate human RF exposure, the Commission’s duty to ensure that mobile handsets are compatible with hearing aids, and the duty to deny federal benefits to certain individuals who have been convicted multiple times of federal offenses related to trafficking in or possession of controlled substances. The Commission believes that these processes can and should also serve the purpose of fulfilling other Commission responsibilities under the Secure Networks Act, and the Commission seeks

comment on that issue.

The Commission also believes that other authorities in the Communications Act of 1934, as amended, provide authority for the Commission to rely on for the proposed modifications to its rules and procedures governing equipment authorization. Since Congress added section 302 to the Act, the Commission's part 2 equipment authorization rules and processes have served to ensure that RF equipment marketed, sold, imported, and used in the United States complies with the applicable rules governing use of such equipment. *See Equipment Authorization of RF Devices*, Docket No. 19356, Report and Order, 39 Fed. Reg. 5912, 5912, para. 2 (1970). That section authorizes the Commission to, "consistent with the public interest, convenience, and necessity, make reasonable regulations ... governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications." 47 U.S.C. 302(a)(1). Regulations that the Commission adopts in implementing that authority "shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and ... to the use of such devices." 47 U.S.C. 302(a)(2). The authorization processes are primarily for the purpose of evaluating equipment's compliance with technical specifications intended to minimize the interference potential of devices that emit RF energy. As noted above, however, these rules are also designed to implement other statutory responsibilities. The Commission seeks comment on the scope of the authority to rely on such rules to effectuate other public interest responsibilities, including the Commission's section 303(e) authority to "[r]egulate the kind of apparatus to be used with respect to its external effects." 47 U.S.C. 303(e). Does Congress's inclusion of the phrase "to be used," rather than "used," give the Commission authority to prevent the marketing and sale of equipment in addition to preventing licensees and others from using such equipment?

Alternatively, does the "public interest" phrase in section 302 itself provide independent authority to deny equipment authorization to equipment deemed to pose an unacceptable security risk? Section 302(a) directs the Commission to make reasonable regulations consistent with the public interest governing the interference potential of devices; it would appear to be in the public interest not to approve devices capable of emitting RF energy in sufficient degree to cause harmful interference to radio communications if such equipment has been deemed, pursuant to law, to pose an unacceptable risk to the

national security of the United States or the security and safety of United States persons. The Commission seeks comment on this tentative conclusion.

The Commission also seeks comment on a potential alternative basis for such security rules. The Communications Assistance for Law Enforcement Act (CALEA) includes security requirements that apply directly to equipment intended for use by providers of telecommunications services. 47 U.S.C. 1001-1010. Section 105 requires telecommunications carriers to ensure that the surveillance capabilities built into their networks “can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission,” (47 U.S.C. 1004) and the Commission has concluded that its rule prohibiting the use of equipment produced or provided by any company posing a national security threat implements that provision. *Supply Chain First Report and Order*, 34 FCC Rcd at 11436-37, paras. 35-36. The Commission is required to prescribe rules necessary to implement CALEA’s requirements. 47 U.S.C. 229. Would rules prohibiting authorization of equipment on the Covered List, or that otherwise poses security risks, be justified as implementation of CALEA?

As noted above, the Commission believes it has ancillary authority under section 4(i) of the Act to adopt these revisions to its part 2 rules as reasonably necessary to the effective enforcement of the Secure Networks Act. The Commission also tentatively concludes that such rules would be consistent with the Commission’s specific statutorily mandated responsibilities under the Communications Act to make reasonable regulations consistent with the public interest governing the interference potential of electronic devices, to protect consumers through the oversight of common carriers under Title II of that Act, and to prescribe the nature of services to be rendered by radio licensees under section 303(b) of that Act. The Commission seeks comment on this reasoning as well. The Commission also seeks comment on any other sources of authority for the Commission proposed rules.

e. Cost-effectiveness analysis

The Commission’s proposed revisions to the equipment authorization rules and processes to prohibit authorization of any “covered” equipment on the Covered List would apply only to equipment that has been determined by other agencies to pose “an unacceptable risk” to national security. The

Commission has already concluded that it has no discretion to disregard determinations from these sources, which are enumerated in section 1.50002(b) of its rules. Hence, the Commission accepts the determination of these expert agencies.

Because the Commission has no discretion to ignore these determinations, the Commission believes that a conventional cost-benefit analysis – which would seek to determine whether the costs of the proposed actions exceed their benefits – is not directly called for. Instead, the Commission will consider whether the proposed actions would be a cost-effective means to prevent this dangerous equipment from being introduced into the nation's communications networks.

The Commission therefore seeks comment on the cost-effectiveness of the proposed revisions to the rules and procedures associated with the Commission's equipment authorization rules under part 2. Do the Commission's proposed rules promote the goals of ensuring that the national security interests are adequately protected from equipment on the Covered List, while simultaneously continuing the mission of making communications services available to all Americans? Are there alternative approaches that would achieve this goal in a more cost-effective manner?

2. Devices Exempt from the Requirement of an Equipment Authorization

Background. Under the Commission's rules, certain types of RF devices are exempt from demonstrating compliance under one of the equipment authorization procedures (either certification or SDoC). This exemption applies to specified digital devices in several types of products, including many part 15 devices (including incidental and unintentional radiators) because they generate such low levels of RF emission that they have virtually no potential for interfering with authorized radio services. *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices without an Individual License*, GN Docket No. 87-389, Notice of Proposed Rulemaking, 2 FCC Rcd 6135, 6140, para. 39 (1987). In other services, the Commission has determined that because operators must be individually licensed and responsible for their stations (e.g., Amateur Radio Service) or the type of operation poses low risk of harmful interference, such an exemption is warranted. *See, e.g.,* 47 CFR 97.315. Exempt devices are required to comply with general conditions of operation, including the requirement that if an exempt device causes interference to other radio services the operator of that device must cease operating the device upon notification from the Commission and must remedy the interference. *See* 47 CFR 15.5.

The most diverse set of exempted devices operate under the part 15 unlicensed device rules. The categories of part 15 exempt devices include incidental radiators, unintentional radiators exempt under section 15.103, and subassemblies exempt under section 15.101. Specifically, section 15.103 of the Commission's rules provides that certain unintentional radiators, which are subject to the general conditions of operation provided in part 15, are exempt from the specific technical standards and other requirements of part 15. This includes: (1) digital devices used exclusively in any transportation vehicle as an electronic control or power system equipment used by a public utility or in an industrial plant, as industrial, commercial, or medical test equipment, or in an appliance (e.g., microwave oven, dishwasher, clothes dryer, air conditioner, etc.); (2) specialized medical digital devices; (3) digital devices that have very low power consumption (i.e., not exceeding 6 nW); (4) joystick controllers or similar devices used with digital devices; and (5) digital devices that both use and generate a very low frequency (i.e. less than 1.705 MHz) and which do not operate from the AC power lines or contain provisions for operation while connected to the AC power lines. Digital device subassemblies also are exempt from equipment authorization under section 15.101. Examples of subassemblies include circuit boards, integrated circuit chips, and other components that are completely internal to a product that do not constitute a final product. These include internal memory expansion boards, internal disk drives, internal disk drive controller boards, CPU boards, and power supplies. Subassemblies may be sold to the general public or to manufacturers for incorporation into a final product.

Discussion. The Commission recognizes that "covered" equipment potentially could include equipment that currently is exempt from the need to demonstrate compliance under the Commission's equipment authorization processes, which, to date, has looked only at the RF emissions capability of equipment. As noted above, most devices that are generally exempt from the Commission's equipment authorization requirements typically have such low RF emissions that they present virtually no potential for causing harmful interference to the authorized radio services. However, the Commission's concerns in relation to security considerations that pose unacceptable risks to the nation's communications networks are distinct from the concerns related to interference to authorized services. As such, the Commission finds it necessary to assess the regulation of otherwise exempt devices in relation to security concerns.

Accordingly, the Commission seeks comment on whether the Commission should consider possible revisions or clarifications to its rules to address issues related to “covered” equipment and the potential of such equipment, regardless of RF emissions characteristics, to pose an unacceptable risk to U.S. networks or users. The Commission seeks comment on whether the Commission should revise its rules to no longer provide an equipment authorization exemption to “covered” equipment. The Commission seeks comment on whether such a provision, if adopted, should apply only to part 15 unlicensed devices or should include any device, regardless of rule part under which it operates, in the consideration of possible revisions or clarifications to the Commission’s rules to address issues related to “covered” equipment and the potential of such equipment, regardless of RF emissions characteristics, to nonetheless pose an unacceptable risk to U.S. networks or users. The Commission also asks whether it should require that any equipment (in whole or in part), regardless of claim of exemption, that is produced or provided by any entity that has produced or provided “covered” equipment on the Covered List be processed pursuant to the Commission’s certification rules and processes (similar to the proposal requiring use of the certification process for such equipment instead of continued use of the SDoC process).

Currently, devices that are exempt from the equipment authorization requirement are not subject to FCC testing, filing, or record retention requirements. Such devices ordinarily would come to the attention of the Commission only in the event that harmful interference with other devices becomes an issue. In order to determine whether otherwise exempt “covered” equipment may present a security concern, the Commission would need to implement some means by which to identify such equipment that is in use in the United States. The Commission seeks comment on possible methods that the Commission could implement to identify otherwise exempt equipment. The Commission could, for instance, implement a registration system for otherwise exempt equipment produced or provided by any of the entities (or their respective subsidiaries or affiliates) that produce or provide “covered” equipment, as specified on the Covered List. Such a system could require that relevant responsible parties notify the Commission of the marketing, importation, or operation of such otherwise exempt equipment. Such notification would include identification of the responsible party, manufacturer, or importer and the general operating parameters of the equipment. Another example includes an attestation at time of

marketing or import that the equipment is not “covered.” What are some potential burdens to responsible parties or other entities that would arise in connection with such a registration or attestation system? In what ways and to what extent would such burdens be acceptable to responsible parties to help protect the U.S. against the related security concerns? What type of information, and from which entities, should the Commission collect in order to identify otherwise exempt “covered” equipment? How many responsible parties would be impacted by these potential information collections and in what way would it impact their ability to conduct business? If the Commission were to revise its rules to remove the exemption with respect to “covered” equipment, the Commission seeks comment on any other types of action or activity (e.g., outreach and education) that also would be helpful to ensure that all parties potentially affected by these changes understand the changes and will comply the prohibition associated with “covered” equipment.

The Commission discussed above the legal authority associated with the Commission’s proposal to prohibit authorization of “covered” equipment in its equipment authorization process. The Commission tentatively concludes that the legal bases enunciated above also provide, pursuant to section 302 and section 4(i) of the Act, for actions that the Commission might take with respect to precluding “covered” equipment from being exempted from the equipment authorization process. The Commission seeks comment on this tentative conclusion.

If the Commission were to conclude that the rules should be revised to prohibit certain “covered” equipment from being exempted from the equipment authorization processes, this action would apply only to equipment that has been determined by other agencies to pose “an unacceptable risk” to national security. Because the Commission has no discretion to ignore these determinations, it believes that a conventional cost-benefit analysis – which would seek to determine whether the costs of the proposed actions exceed their benefits – is not necessary. Instead, as discussed above, the Commission will consider whether the proposed actions would be an effective means to prevent this dangerous equipment from being introduced into the nation's communications networks.

3. Revoking Equipment Authorizations

The actions that the Commission proposes above would serve to prohibit any prospective authorization of “covered” communications equipment on the Covered List as posing an unacceptable

risk to national security. Those proposed actions do not, however, address whether the Commission could or should revoke any existing equipment authorizations of such “covered” communications equipment, and if so, the processes for doing so. The Commission addresses those issues here.

Background. Section 2.939 sets forth the Commission’s rules for revoking authorizations of equipment. Section 2.939(a)(1) provides that the Commission may revoke an equipment authorization “[f]or false statements or representations either in the application or in materials or response submitted in connection therewith” or in records that the responsible party is required to maintain about the authorized equipment (e.g., drawings and specifications, description of the equipment, any test report, equipment compliance information). Section 2.939(a)(2) states that the Commission may revoke an equipment authorization “[i]f upon subsequent inspection or operation it is determined that the equipment does not conform to the pertinent technical requirements or to the representations made in the original application.” Section 2.939(a)(3) provides that the Commission may revoke an equipment authorization “[i]f it is determined that changes have been made in the equipment other than those authorized by the rules or otherwise expressly authorized by the Commission.” Section 2.939(a)(4) provides that the Commission may revoke any equipment authorization “[b]ecause of conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application.” As set forth in § 2.939(b) of the Commission’s rules, the procedures for revoking an equipment authorization are the same procedures as revoking a radio station license under section 312 of the Communications Act. *See* 47 CFR 2.939(b); 47 U.S.C. 312. Finally, under § 2.939(c), the Commission also “may withdraw any equipment authorization in the event of changes in its technical standards.”

Discussion. If the Commission adopts the rules proposed above to prohibit any further authorization of “covered” equipment on the Covered List, the Commission seeks comment here on the extent to which the Commission should revoke any existing equipment authorizations of such “covered” equipment pursuant to the Commission’s section 2.939 revocation rules. The Commission notes that if it revoked an existing equipment authorization, the marketing of that equipment would be prohibited pursuant to part 2 subpart I, per section 2.803(b), and import and marketing would be prohibited pursuant to part 2 subpart K, per sections 2.1201(a) and 2.1204(a).

The Commission tentatively concludes that sections 2.939(a)(1) and (2) would apply to “covered” equipment, such that the Commission has authority to revoke any existing equipment authorizations that may have been granted under false statements or representations (including non-disclosure) concerning whether an equipment authorization application that was subsequently granted had in fact included “covered” equipment (in whole or as a component part). *Shenzhen Tangreat Technology Co., Ltd.*, 30 FCC Rcd 3501,3505, paras. 12-14 (EB 2015) (*Shenzhen*) (“substantial and material questions exist as to whether the authorization should be revoked because the information in the application was false or misleading”). This would enable the Commission to revoke any equipment authorizations that are granted after adoption of the rules proposed in this NPRM, even if the TCBs or the Commission had not acted to set aside the grant within the 30-day period following the posting of the grant on the Equipment Authorization System (EAS) database. The Commission seeks comment on this tentative conclusion.

To assure that otherwise authorized equipment is not subsequently replaced by any “covered” equipment (whether in whole or with component part(s) of “covered” equipment), the Commission also tentatively concludes that section 2.939(a)(3) would apply, and that the Commission can revoke an existing equipment authorization if changes have been made in the equipment other than those authorized by the rules or otherwise expressly authorized by the Commission. *Shenzhen*, 30 FCC Rcd at 3505-06, paras. 15-17 (Commission investigation demonstrated that the equipment marketed does not match the specifications described in the granted application). The Commission seeks comment on these and any other scenarios that implicate the need to revoke an existing equipment authorization to exclude “covered” equipment from the U.S. market.

The Commission also seeks comment on other circumstances that would merit Commission action to revoke any existing authorization of “covered” equipment. Under what circumstances should the Commission revoke an existing authorization? For instance, to what extent does section 2.939(a)(4), which allows revocation “[b]ecause of conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application,” provide guidance? Specifically, if the Commission would not have granted an application with equipment from an entity on the Covered List under newly adopted rules, then could the Commission use section 2.939(a)(4) to revoke an equipment authorization with said equipment that had been granted prior to the adoption of the rule? *Shenzhen*, 30

FCC Rcd at 3506, paras. 18-20 (when Commission investigation determined device was a radio frequency jammer, “substantial and material questions exist as to whether the application should have been granted”), *see also J Communications Co., Ltd.*, 19 FCC Rcd 10643, 10645, para. 9 (EB 2004) (revoking GMRS radios because the Commission could have denied the original equipment authorization application for the devices “had this fact been made known to the Commission”). The Commission seeks comment on this approach and on any other approach or particular circumstances that would merit Commission action to revoke any existing authorization that concerns “covered” equipment on the Covered List.

The Commission seeks comment on the applicability of section 2.939(c), which states that the Commission also “may withdraw any equipment authorization in the event of changes in its technical standards,” with regard to revocation of authorizations that include “covered” equipment. In the event the Commission were to adopt rules barring new equipment authorizations for equipment on the Covered List, it tentatively concludes that such a change should constitute a change to the Commission’s technical standards that could warrant withdrawal of equipment authorizations that are contrary to these new rules. The Commission seeks comment.

In addition, the Commission seeks comment on the specific procedures the Commission should use if and when it seeks to revoke an existing equipment authorization. Section 2.939(b) requires that revocation of an equipment authorization must be made in the “same manner as revocation of radio station licenses,” and thus presumably would include the requirement that the Commission serve the grantee/responsible party with an order to show cause why revocation should not be issued and must provide that party with an opportunity for a hearing. *See* 47 U.S.C. 312(c). The Commission seeks comment on this requirement. What precisely are the procedures that the Commission should employ if seeking to revoke particular “covered” equipment? As the Commission discussed above, § 2.939(c) authorizes the Commission to “withdraw any equipment authorization in the event of changes in its technical standards.” Pursuant to this provision, should the Commission provide a suitable amortization period for equipment already in the hands of users or in the manufacturing process? If so, what would that be? What other factors should the Commission consider that might warrant revocation under the new rules, such as those applicable to Title III licenses under section 312 of the Communications Act? 47

U.S.C. 312. Should the Commission revise or clarify the existing requirements to enable the Commission to revoke authorizations of this “covered” equipment given that it already has been determined that the equipment poses an unacceptable risk?

In considering whether any existing equipment authorizations of “covered” equipment should be revoked, is there some process in which the Commission should engage to help identify particular equipment authorizations that should be considered for revocation? What process should the Commission use to identify equipment authorizations for revocation? For example, to what extent might the Commission rely on others’ reports of a violation, and to what extent might such reports need to be supported in the record or independently verified? If the Commission were to conclude that revocation may be appropriate regarding particular “covered” equipment, this action would apply only to equipment that has been determined by other agencies to pose “an unacceptable risk” to national security. The Commission nonetheless recognizes the need to avoid taking actions that are overbroad in terms of affecting users of the equipment or would require removal of this equipment faster than it reasonably can be replaced. If the Commission concludes that revocation may be appropriate regarding particular “covered” equipment, the Commission seeks comment on the appropriate and reasonable transition period for removing that particular equipment. This could include a transition period for non-conforming equipment to make any necessary modifications to communications equipment or services, including removing the “covered equipment” (in whole or as a component) from that equipment or service. To what extent should the Commission apply different transition periods to different equipment authorizations that the Commission revokes? Are there any situations that might merit immediate compliance with the new equipment restrictions? Pursuant to section 503(b)(5) of the Act, the Commission must issue citations against non-regulatees for violations of FCC rules before proposing any monetary penalties. 47 U.S.C. 503(b)(5). Such citations “provide notice to parties that one or more actions violate the Act and/or the FCC’s rules – and that they could face a monetary forfeiture if the conduct continues.” *See* Federal Communications Commission, Enforcement Bureau, “Enforcement Overview” at 10 (April 2020), https://www.fcc.gov/sites/default/files/public_enforcement_overview.pdf. Given this requirement, what enforcement policy would be appropriate for the continued marketing, sale, or operation of equipment by such parties during this transition period? What, if any, educational and

outreach efforts should the Commission undertake to inform the public regarding any such revocations and their legal effect?

Finally, the Commission seeks comment on whether the Commission should make any revisions to § 2.939. Should this section be revised and/or clarified to specifically include “covered” equipment or whether the rule should be clarified to better encompass the intent in this rulemaking? What other specific revisions might be appropriate for consideration?

B. Competitive Bidding Certification

Background. The Commission’s competitive bidding process requires each applicant to make various certifications as a prerequisite for participation in an auction. Requiring certifications as a condition of participation guards against potential harms to the public interest before the harms could occur.

As described above, the Commission has designated Huawei and ZTE, and their subsidiaries, parents, or affiliates, as companies that pose a national security threat to the integrity of communications networks and the communications supply chain. *See generally Huawei Designation Order*, 35 FCC Rcd 6604, *ZTE Designation Order*, 35 FCC Rcd 6633. As a result of this determination, funds from the Commission’s Universal Service Fund may no longer be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by these covered companies.

In reaching this determination, the Commission noted Huawei’s and ZTE’s ties to the Chinese government and military apparatus, along with Chinese laws obligating it to cooperate with requests by the Chinese government to use or access its systems. *Huawei Designation Order*, 35 FCC Rcd at 6609, paras. 13-14. However, it also is well-established that the Chinese government helps fuel Huawei’s growth by deploying powerful industrial policies to make Huawei equipment cheaper to deploy than the alternatives. Chuin-Wei Yap, *State Support Helped Fuel Huawei’s Global Rise*, Wall Street Journal (Dec. 25, 2019), <https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736>. These policies include both direct subsidies to Huawei and state-funded export financing.

To illustrate, a recent report by the Center for American Progress found that China’s state-owned banks have provided billions of dollars to Huawei’s customers. Melanie Hart and Jordan Link, Center for

American Progress, *There Is a Solution to the Huawei Challenge* (Oct. 14, 2020),

<https://www.americanprogress.org/issues/security/reports/2020/10/14/491476/solution-huawei-challenge/>.

According to the report, these loans “can make Huawei impossible to beat – even if competitors can match the company’s state-subsidized prices – because China’s state banks offer packages that commercial banks generally cannot match.” *Id.* at para. 25. These loans may be run through Huawei or provided directly to Huawei’s customers.

The Commission notes that the nature of state support for Huawei and ZTE has shifted over time. Recently, the Commission has observed how state-funded export financing may provide substantial funding to mobile operators already using equipment from Huawei or ZTE prior to national spectrum auctions in other countries. In one recent case, a Huawei customer was able to substantially outbid a rival new entrant in a spectrum auction – thereby denying entry to a new competitor that was planning on using trustworthy equipment in its 5G build-out.

Distortionary financing intended to support participation in spectrum auctions of network operators who then deploy covered equipment and services may raise concerns about risks to the national security of the United States and the security and safety of United States persons. The Commission considers here the benefits of protecting against such risks prior to the start of a Commission auction.

Discussion. Given recent developments internationally, the Commission seeks comment on whether the Commission should require an applicant to participate in competitive bidding to certify that its bids do not and will not rely on financial support from any entity that the Commission has designated under section 54.9 of its rules as a national security threat to the integrity of communications networks or the communications supply chain. Could such support implicate the kinds of influence over the applicant that would pose risks to national security? Or could it distort auction outcomes in ways that would pose risks to national security? What challenges would an applicant have in satisfying such a certification, given potential uncertainties regarding the ultimate origin of financial support? Can the certification be crafted to address these challenges? Do these uncertainties present difficulties for the Commission in enforcing the certification? How can these difficulties be mitigated?

If the Commission adopts a requirement that an applicant certify that its bids do not and will not rely on financial support by an entity designated by the Commission as a national security threat, should

the certification be limited to just the entities so designated by the Commission under section 54.9 or be more expansive? What are the challenges with including indirect provision of financing in the certification and how can they be mitigated to ensure it accomplishes its purpose? Should the certification be expanded to include an identified set of related entities, e.g., entities subject to control by an entity designated by the Commission? What entities should such a set include? How does the fungibility of financial resources complicate compliance? How can enforcement challenges be alleviated?

IV. INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present 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 Rule Making (Notice). 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. 104-121, Title II, 110 Stat. 857 (1996)). 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, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register. 5 U.S.C. 603(a).

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

In this Notice of Proposed Rulemaking, we propose prohibiting the authorization of any equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Secure and Trusted Communications Networks Act of 2019, Pub. L. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609) (Secure Networks Act). (The Commission’s Public Safety and Homeland Security Bureau maintains the list at <https://www.fcc.gov/supplychain/coveredlist>). Such equipment has been found to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. We also seek comment on whether and under what circumstances we should revoke any existing authorizations of such “covered” communications equipment. Finally, we invite comment on

whether we should require additional certifications relating to national security from applicants who wish to participate in Commission auctions.

B. Legal Basis

The proposed action is taken under authority found in sections 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312 and 316; and § 1.411 of the Commission's rules, 47 CFR 1.411.

C. Small Businesses, Small Organizations, and Small Governmental Jurisdictions.

Our actions, over time, may 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. *See* 5 U.S.C. 601(3)-(6). First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. *See* SBA, Office of Advocacy, "What's New With Small Business?" <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept. 2019). These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses. *Id.*

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." 5 U.S.C. 601(4). The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS. *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>.

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." 5 U.S.C. 601(5). U.S. Census Bureau data from the 2017 Census of Governments (*see* 13 U.S.C. 161) indicate that there were 90,075 local governmental jurisdictions

consisting of general purpose governments and special purpose governments in the United States. *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. (Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes _Local Governments by Type and State_2017). Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

Satellite Telecommunications. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” *See* U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>. Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. *See* 13 CFR 121.201, NAICS Code 517410. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. *See* U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

All Other Telecommunications. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite

tracking, communications telemetry, and radar station operation. See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,”

<https://www.census.gov/naics/?input=517919&year=2017&details=517919>. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. *Id.* Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. *Id.* The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less. See 13 CFR 121.201, NAICS Code 517919. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919,

<https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999. *Id.* Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our proposed rules.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our proposed rules.

Mobile Satellite Earth Stations. There are 19 licensees. We do not request nor collect annual revenue information and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our proposed rules.

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. See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. See 13 CFR 121.201, NAICS Code 517312 (previously 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. *Id.* Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

Wireless Carriers and Service Providers. Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable is Wireless Telecommunications Carriers (except Satellite) (see U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>), which the SBA small business size standard is such a business is small if it 1,500 persons or less. *Id.* For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information:*

Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services. See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf. Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees. See *id.* Thus, using available data, we estimate that the majority of Wireless Carriers and Service Providers can be considered small.

Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. See 13 CFR 121.201, NAICS Code 517311 (previously 517110). U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information:*

Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>. Of this total, 3,083 operated with fewer than 1,000 employees. *Id.* Thus, under this size standard, the majority of firms in this industry can be considered small.

Licenses Assigned by Auctions. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Private Land Mobile Radio ("PLMR"). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. See 13 CFR 121.201, NAICS Code 517312 (formerly 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. *Id.* Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. This figure was derived from Commission licensing records as of September 19, 2016.

(Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees). There are a total of approximately 3,577 PLMR licenses in the 4.9 GHz band; 19,359 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. See U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. *Id.* The SBA has established a small business size standard for this industry of 1,250 employees or less. See 13 CFR 121.201, NAICS Code 334220. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. *Id.* Based on this data, we conclude that a majority of manufacturers in this industry are small.

Auxiliary Special Broadcast and Other Program Distribution Services. This service involves a

variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). Neither the SBA nor the Commission has developed a size standard applicable to broadcast auxiliary licensees. The closest applicable SBA category and small business size standard falls under two SBA categories - Radio Stations and Television Broadcasting. The SBA size standard for Radio Stations is firms having \$41.5 million or less in annual receipts. *See* 13 CFR 121.201, NAICS Code 515112. U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515112, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year and 17 with annual receipts between \$25 million and \$49,999,999 million. *Id.* For Television Broadcasting the SBA small business size standard is such businesses having \$41.5 million or less in annual receipts. *See* 13 CFR 121.201, NAICS Code 515120. U.S. Census Bureau data show that 751 firms in this category operated in that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more. *Id.* Accordingly, based on the U.S. Census Bureau data for Radio Stations and Television Broadcasting, the Commission estimates that the majority of Auxiliary, Special Broadcast and Other Program Distribution Services firms are small.

Radio Frequency Equipment Manufacturers (RF Manufacturers). Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A

description of these small entity categories and the small business size standards under the SBA rules are detailed below.

Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). See U.S. Census Bureau, 2017 NAICS Definitions, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=334290&search=2017+NAICS+Search&search=2017>. Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing. *Id.* The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. See 13 CFR 121.201, NAICS Code 334290. U.S. Census Bureau data for 2012 show that 383 establishments operated in that year. See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334290&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. *Id.* Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. (These statistics are based on a review of the Universal Licensing System on September 22, 2015). The Commission has not yet defined a small

business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS Code 517312 (previously 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series, Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. *Id.* Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

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

The proposals being made in this Notice may require additional analysis and mitigation activities to the part 2 rules that include various provisions to help ensure the integrity of the equipment authorization process. The Commission is authorized to dismiss or deny an application where that application is not in accordance with Commission requirements or the Commission is unable to make the finding that grant of the application would serve the public interest. The rules also require the TCB to perform "post market surveillance" of equipment that has been certified, with guidance from OET, as

may be appropriate.

The Supplier's Declaration of Conformity (SDoC) process is available with respect to certain types of RF devices that have less potential to cause interference. The SDoC procedure requires the party responsible for compliance ("responsible party") to make the necessary measurements and complete other procedures found acceptable to the Commission to ensure that the particular equipment complies with the appropriate technical standards for that device. At this time, the Commission's current equipment authorization rules do not include specific provisions addressing the "covered" equipment on the Covered List. This Covered List identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission is required to include communications equipment and services on the list based exclusively on determinations made by Congress and by other U.S. government agencies. Currently, the list includes equipment and services produced or provided by five entities.

In this Notice we examine our rules relating to equipment authorization and participation in Commission auctions to help advance the Commission's goal of protecting national security and public safety. This builds on other actions the Commission recently has taken to protect and secure our nation's communications systems.

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

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." 5 U.S.C. 603(c). In this proceeding, our proposals are consistent with (2), in that our goal is to seek comment on various steps that the Commission could take in its equipment authorization program, as well as its competitive bidding program, to reduce threats posed to our nation's communications system by "covered" equipment and services on the Covered List.

We also seek comment on whether the Commission should revoke equipment authorizations of “covered” equipment, and if so under what conditions and procedures.

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

None.

List of Subjects

Communications, Communication equipment, Reporting and recordkeeping requirements, Telecommunications, and Wiretapping and electronic surveillance.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

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

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

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

2. Add § 2.903 to subpart J to read as follows:

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

Any equipment on the Covered List, as defined in § 1.50002 of this chapter, is prohibited from obtaining an equipment authorization under this subpart. This includes:

- (a) Equipment subject to certification procedures: Telecommunication Certification Bodies and the Federal Communications Commission are prohibited from issuing a certification under this subpart for any equipment on the Covered List; and
- (b) Equipment subject to Supplier's Declaration of Conformity procedures.

3. Amend § 2.906 by adding paragraph (d) to read as follows:

§ 2.906 Supplier's Declaration of Conformity.

* * * * *

(d) All equipment produced or provided by any of the entities, or their respective subsidiaries or affiliates, that produce or provide "covered" equipment on the Covered List established pursuant to § 1.50002 of this chapter, is prohibited from obtaining equipment authorization through the Supplier's Declaration of Conformity process.

4. Amend § 2.907 by adding paragraph (c) to read as follows:

§ 2.907 Certification.

* * * * *

(c) All equipment produced or provided by any of the entities, or their respective subsidiaries or affiliates, that produce or provide "covered" equipment, as specified on the Covered List established pursuant to § 1.50002 of this chapter, must obtain equipment authorization through the certification

process.

5. Amend § 2.909 by revising paragraph (a) to read as follows:

§ 2.909 Responsible Party.

(a) For equipment that requires the issuance of a grant of certification, the party to whom that grant of certification is issued is responsible for the compliance of the equipment with the applicable standards. If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter. In either case, the responsible party must be located in the United States (see § 2.1033).

* * * * *

6. Amend § 2.911 by adding paragraph (d)(5) to read as follows:

§ 2.911 Application requirements.

* * * * *

(d) * * *

(5) The applicant shall provide a written and signed certification that, as of the date of the filing of the application, the equipment for which the applicant seeks equipment authorization through certification is not “covered” equipment on the Covered List established pursuant to § 1.50002 of this chapter.

* * * * *

7. Amend § 2.1033 by revising paragraph (b)(1) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(1) The identification, by name, mailing address and telephone number or Internet contact information, of the manufacturer of the device, the applicant for certification, and the responsible party as defined in § 2.909. The responsible party must be located within the United States.

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