DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0097]

Drawbridge Operation Regulation; Mianus River, Greenwich, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North Bridge across the Mianus River, mile 1.0 at Greenwich, Connecticut. The deviation is necessary to repair the superstructure and replace timber ties. This deviation allows the bridge to be closed to navigation.

DATES: This deviation is effective from 8 a.m. on April 10, 2018 to 8 a.m. on May 14, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0097 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jeffrey Stieb, First Coast Guard District Bridge Branch, Coast Guard; telephone 617–223–8364, email *Jeffrey.D.Stieb@uscg.mil.*

SUPPLEMENTARY INFORMATION: The owner of the bridge, the Connecticut Department of Transportation (CT DOT), requested a temporary deviation to conduct superstructure repair and timber ties replacement. The Metro-North Bridge across the Mianus River, mile 1.0, at Greenwich Connecticut has a vertical clearance in the closed position of 20 feet at mean high water and 27 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.209.

This temporary deviation allows the bridge to operate from 8 a.m. April 10, 2018 to 8 a.m. on Monday, May 14, 2018 as follows: From 8 a.m. Monday through 4 p.m. Friday, the draw is authorized to remain closed to navigation; from 4:01 p.m. Friday to 7:59 a.m. Monday, the draw shall open with 24 hours advance notice.

The deviation will have negligible effect on vessel navigation. The waterway is transited primarily by seasonal recreational vessels and small commercial fishing vessels. In 2016 there were six openings and in 2017 there were 19 openings between the effective dates. CT DOT has notified waterway users, the harbormaster, and town officials of the requested deviation. No objections to the proposed closure were received. Vessels that can pass through the bridge in the closed position may continue to do so. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. CT DOT will issue a press release announcing the closure. The Coast Guard will inform waterway users of the closure through Local and Broadcast Notices to Mariners.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 14, 2018.

Christopher J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2018–03470 Filed 2–20–18; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 4, 9, and 20

[WT Docket No. 16–240; FCC 17–167]

Requirements for Licensees To Overcome a CMRS Presumption

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission adopts rules to harmonize and streamline the Commission's regulations regarding the classification of commercial and private mobile radio services, primarily by removing provisions in the Commission's rules that were outdated or unnecessary. The rules in question list various services or subservices that the Commission had classified as ''mobile services'' and determined to be ''commercial mobile radio services'' (or ''CMRS'') (in accordance with the definitions set forth in the Communications Act). These rules also establish in certain instances a presumption that some services are private mobile radio services (or ''PMRS''), and set out a process by which that presumption can be rebutted. This action also removes any presumptions about whether mobile services are regulated as commercial or private, and instead allows licensees to rely on the statutory definitions of those terms to identify the nature and regulatory treatment of their mobile services, consistent with applicable service rules.

DATES: Effective March 23, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas Reed at *thomas.reed@fcc.gov,* of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–0531.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Order*) in WT Docket No. 16–240, FCC 17–167, released on December 18, 2017. The complete text of the *Order,* including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A157, Washington, DC 20554, or by downloading the text from the Commission's website at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1218/FCC-17-167A1.pdf.*

Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

The Commission will send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

I. Report and Order

1. The Commission adopted §§ 20.7 and 20.9 in 1994 as part of its implementation of Sections 3(n) and 332 of the Communications Act, which Congress amended in the Omnibus Budget Reconciliation Act of 1993 (OBRA). Congress, seeking to bring mobile services that were similar in nature under a consistent regulatory framework, created the statutory classifications of ''commercial mobile services'' and ''private mobile services'' (referred to in Commission rules as commercial mobile radio service and private mobile radio service, respectively). The Communications Act defines commercial mobile service as ''any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public[.]'' ''Private mobile service'' is defined in the negative as ''any mobile

service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service[.]'' In the 1994 *CMRS Second Report and Order* (GN Docket No. 93–252) (59 FR 18493), the Commission mirrored these definitions in § 20.3 of its rules. Thus, § 20.3 defines ''commercial mobile radio service'' as a for-profit, interconnected mobile service that is available to the public; or to such classes of eligible users as to be effectively available to a substantial portion of the public; or the functional equivalent of such a for-profit, interconnected mobile service. ''Private mobile radio service'' is defined as a mobile service that is neither a commercial mobile radio service nor the functional equivalent of a commercial mobile radio service. Similarly, the Commission largely mirrored the statutory definition of ''mobile services'' in its definition in the rules.

2. The Commission, in adopting §§ 20.7 and 20.9, conducted an extensive review of the 1993 OBRA, its legislative history, and developments in the regulation of wireless services. The Commission noted that Congress ''replaced the common carrier and private radio definitions that evolved under the prior version of section 332 of the Act with two newly defined categories of mobile services: Commercial mobile radio service (CMRS) and private mobile radio service (PMRS),'' and ''replaced traditional regulation of mobile services with an approach that brings all mobile service providers under a comprehensive, consistent regulatory framework and gives the Commission flexibility to establish appropriate levels of regulation for mobile radio service providers.'' Two Congressional objectives appeared to drive these statutory changes: (1) Ensuring that ''similar [mobile] services would be subject to consistent regulatory classification[,]'' and (2) establishing and administering for CMRS providers ''an appropriate level of regulation.''

3. Applying the purpose of the legislation to include all existing mobile services within the ambit of section 332 and in view of the goal of achieving regulatory symmetry, the Commission stated that all existing mobile services will be included within the ambit of section 332 as well as all auxiliary services and ancillary fixed communications offered by such service providers. In addition, the Commission stated that ''unlicensed PCS and part 15 devices will not be included under the definition of mobile services,'' but other unlicensed services meeting the definition of CMRS, such as the resale of CMRS, are mobile services within the meaning of sections 3(n) and 332 of the Communications Act. Section 20.7 memorialized these and listed the existing mobile services.

4. In addition, applying the statutory criteria to the existing common carrier mobile services at the time, the Commission identified in § 20.9(a) thirteen specific mobile service bands (or subsets thereof) that met the definition of CMRS and would be treated as common carrier services. At the time, in the wake of the 1993 OBRA, the list served as a clear, easily applied tool for implementing the new CMRS classification and creating certainty about which regulatory regime would apply to a given license band. The primary reason this approach worked well was because many of the service-specific wireless rule parts drew clear lines between commercial and private operation in terms of service rules, obligations, and usage, and the licensed operations within a given service were often limited by rule either to common or private carriage. If a licensee of a service band identified in § 20.9(a) wished to provide service on a private basis, it would have needed to seek a waiver of § 20.9(a). Section 20.9(b) identifies three services that are specifically presumed to be CMRS (rather than deemed to be regulated as CMRS in § 20.9(a)) and prescribes a certification process for overcoming that presumption in cases where the provider intends to operate on a PMRS basis.

5. In crafting the § 20.9(a) approach, the Commission also noted that Congress was concerned with the ''disparate regulatory treatment'' that had evolved across services, and it observed that Congress's intent for the Commission to establish consistent regulations was reflected in the statutory requirement that any service that amounted to the ''functional equivalent'' of CMRS be treated as such, even if it did not meet the strict definition. At the same time, the Commission ''anticipat[ed] that very few mobile services that do not meet the definition of CMRS will be a close substitute for a [CMRS].'' Because the Commission expected that the functional equivalency test would be applied only rarely, it decided to create another presumption—*i.e.,* to ''presume that a mobile service that does not meet the definition of CMRS is a [PMRS].'' To rebut that presumption, a challenger to a PMRS claim could file a petition for declaratory ruling attempting to show that the service at issue met the definition of CMRS or was the functional equivalent of CMRS. Section 20.9(a)(14) memorializes this presumption and the process for overcoming the presumption.

6. For the services listed in § 20.9(b), the rules state that service may be provided on a PMRS basis only if the licensee or applicant overcomes the presumption that those services are CMRS through a specific certification process. Specifically, § 20.9(b) requires licensees of, or applicants for, Personal Communications Service (PCS), VHF Public Coast Stations, and Automated Maritime Telecommunications Systems (AMTS) that want to operate on a PMRS basis to include a certification as part of an authorization, modification, transaction, or spectrum leasing application demonstrating that the proposed service does not fall within the definition of CMRS. The application is placed on public notice for 30 days, during which interested parties may file petitions to deny.

7. While § 20.9's regulatory treatment of certain service bands may well have been a reasonable tool when it was adopted, it was based on assumptions that no longer apply—namely that a licensee would offer a service restricted either to CMRS or PMRS use rather than seek to have the flexibility to operate as both. In recent years, the Commission's spectrum regulation has turned toward a flexible use model that no longer supports this particular treatment embedded in the Commission's rules. Section 20.9 was adopted at a time when there were far fewer wireless licensees and services than exist today. Dramatic changes have occurred in the wireless industry since then. Notably, licensees of spectrum bands not identified in § 20.9 are governed by service-specific rules that afford entities greater flexibility in how operations can be provided and that do not presume them to be CMRS or PMRS. Applicants and licensees in these newer services can select whether they will be providing common carrier service, non-common carrier service, and/or private, internal communications on FCC Form 601 or in other applications. Moreover, the continuing demand for PMRS use of spectrum—including spectrum that providers, in the past, had primarily sought for CMRS use—has altered another of the underlying assumptions of § 20.9(a), *i.e.,* that the demand to operate services referenced in § 20.9 is primarily a demand to offer such services on a CMRS basis.

8. In light of the broadened interest in and need for spectrum covered by § 20.9 by an increased diversity of licensees, the Commission has sought to provide greater flexibility to applicants,

licensees, and spectrum lessees [1] subject to § 20.9, but these efforts have nonetheless left some entities with burdens that their counterparts in other spectrum bands do not face. In 2005, for example, the Commission eliminated the restriction that entities must operate as common carriers in order to hold a part 22 license. Despite this change, part 22 applicants, licensees, and spectrum lessees are still required to seek a waiver of § 20.9(a) if they plan to operate on a non-CMRS basis. In recent years, applicants, licensees, and spectrum lessees in many services presumed to be CMRS have requested waiver of § 20.9(a) as part of an initial authorization, modification, transaction, or spectrum leasing application, and the inclusion of the waiver request often increases the time it takes the Commission to process the application. For example, a paging assignment application in which the assignee includes a waiver request must go on public notice for a minimum of 14 days. Absent the waiver request, the application otherwise might be subject to overnight grant under the Commission's processing rules. Similarly, the § 20.9(b) process for PCS, VHS Public Coast station services, and AMTS licensees to certify that their proposed operations are not commercial is cumbersome and time-consuming. Applications that include a § 20.9(b) certification often could be granted on an overnight basis absent § 20.9(b)'s public notice requirement.

9. To address these inefficiencies, the Commission in July 2016 released a *Notice of Proposed Rulemaking* (WT Docket No. 16–240) (NPRM) (81 FR 55161) recognizing that § 20.9's approach to the regulatory status of certain bands was not the only way to administer the CMRS/PMRS statutory framework, and seeking comment on whether to eliminate this approach by removing § 20.9 from its rules. The Commission tentatively concluded that doing so would streamline application processing and promote comparable treatment of wireless applicants and licensees operating in different spectrum bands. The Commission anticipated that this revision of its rules would shorten the processing time for a number of applications and eliminate the obligation of licensees and applicants in the specified § 20.9 bands to make a showing—even if brief—regarding their intent to operate on a PMRS-basis. It tentatively concluded that this, in turn, would lead to more efficient and timely use of spectrum, without imposing more regulatory burdens than necessary for the Commission to oversee spectrum usage. The Commission sought comment on its tentative conclusions and on the costs and benefits of its proposed rule elimination. Five parties filed comments and two parties filed reply comments in response to the NPRM, all of which generally support elimination of § 20.9.

10. The Commission also sought comment in the NPRM on eliminating § 20.7's list of certain services that meet the statutory definition of ''mobile service'' as used in sections 3(n) and 332 of the Act. This list is under-inclusive—it does not include all the services that are, in fact, ''mobile services'' under the statutory language and the § 20.3 definition. The Commission tentatively concluded that § 20.7 no longer serves a useful purpose and stressed that eliminating § 20.7 would not change the definition of ''mobile service'' contained in § 20.3 of the rules.

II. Streamlining Part 20 of the Commission's Rules

11. *Elimination of § 20.9.* The Commission removes § 20.9 from its rules, eliminating that section's approach for determining whether services provided in the specified frequency bands are CMRS. There is unanimous support for this rule change, with every commenter addressing this issue supportive of the Commission removing § 20.9 in its entirety. This action is also consistent with the Commission's recent steps in the WRS Second Report and Order and Further Notice of Proposed Rulemaking, released on August 3, 2017 (WT Docket No. 10–112) (82 FR 41580), to harmonize renewal and other regulatory requirements across services and to simplify regulatory processes. Going forward, licensees and applicants whose services were subject to § 20.9 can rely on the relevant definitions in the Communications Act and the Commission's rules—which articulate with sufficient clarity what constitutes CMRS and PMRS—to identify the nature of their services in relevant Commission applications. Akin to their counterparts operating in other frequency bands that already accommodate flexible use, these entities may provide any service that is consistent with the technical rules of the band in which they operate. Licensees will no longer need to seek waivers or submit certifications to the Commission before they can provide non-commercial services; they need only look to the definitions of CMRS and PMRS to determine their regulatory status and proceed accordingly.

12. Eliminating § 20.9 is consistent with the Commission's ongoing efforts to facilitate flexible use of spectrum, and will allow licensees to respond more quickly to consumer demand and competitive forces. Moreover, removing § 20.9 will help eliminate uneven and disparate regulation of wireless applicants and licensees in different spectrum bands. The Commission finds that the public interest is best served by treating similarly situated entities on a more equal, comparable basis. As previously discussed, Congress's intent in creating the CMRS and PMRS umbrella service definitions was to ensure that similarly situated service providers were operating on the same regulatory footing, and the Commission aimed to effectuate this intent by adopting § 20.9. But as a result of the changes that have occurred in the preceding two decades, entities operating in frequency bands subject to § 20.9 are not treated the same as their competitors in other bands. Rather, if they wish to use the spectrum for non-commercial services, this subset of licensees and applicants must file requests for waivers of § 20.9(a) or certifications that operations are not CMRS under § 20.9(b), and they must endure delays associated with the required public notice periods, even though the requests and certifications are usually granted on a routine basis. Several commenters highlight how elimination of § 20.9 will reduce burdens for such entities, enabling them to put their spectrum to efficient use more quickly.

13. The Commission also expects that removing § 20.9 will enable service providers to more easily meet the continuing demand for PMRS and other non-traditional CMRS operations that serve the public interest. The Commission concludes that elimination of § 20.9 will help bring beneficial services to businesses, state and local governments, and the public safety community, while reducing the administrative burdens and processing delays that certain providers of these services currently face.

14. A few commenters caution the Commission that any rule changes should not substantively alter CMRS and PMRS licensees' respective regulatory obligations or expectations regarding their licenses. Nothing here is intended to substantively change the definitions of CMRS and PMRS in § 20.3 of the Commission's rules, which generally track the statutory definitions and which provide sufficiently clear guidance to enable providers to

[1] The Commission's references to spectrum lessees also include spectrum sublessees.

continue to determine the nature of their services accurately. Nor does the Commission take any action in this *Order* to change the regulatory obligations that attach to CMRS operations [2] or to PMRS operations. Entities may continue to provide both CMRS and PMRS under the same license, to the extent allowed by, and subject to, the statutes, rules, and requirements that otherwise apply to the particular service at issue.

15. As the Commission proposed in the NPRM, applicants and licensees that were subject to § 20.9 and that utilize ULS can inform Commission staff in initial, modification, transaction, or spectrum leasing applications whether they seek authorization to provide or use their service for any of the applicable service offerings—''common carrier,'' ''non-common carrier,'' and/or ''private, internal communications''—without any additional showing, as applicants and licensees already do in spectrum bands that already accommodate flexible use. In other words, they can select ''non-common carrier'' and/or ''private, internal communications,'' as applicable, without needing to include a waiver request or certification to prove that their service is not CMRS. There is no opposition to this approach from commenters. Importantly, this will not place any additional burdens on applicants and licensees. The Commission's rules already permit entities to self-identify their regulatory status but, because of § 20.9, entities using spectrum in identified frequency bands had to go through the additional administrative processes discussed above. Based on the forgoing, the Commission eliminates the need for them to do so.

16. *PMRS Presumption and Rebuttal Process.* As discussed above, § 20.9(a)(14) sets forth a rebuttable presumption that ''[a] mobile service that does not meet the definition of commercial mobile radio service is presumed to be a private mobile radio service,'' [3] and it sets out the process for rebutting such a presumption. This only acts as a presumption, however, with respect to an ''interested party's'' challenge to a provider's *claim* that its service is PMRS, in light of the implicit factual assertion that the service does not meet the definition of CMRS. If the challenger cannot overcome the presumption of the validity of the provider's claim that its service does not, as a factual matter, meet the § 20.3 definition of CMRS,[4] then the PMRS status of the operation at issue has been established as a definitional matter under the rule and statute, and this challenge will fail.[5]

17. In the NPRM, the Commission observed that the rules do not need to identify service bands that will be treated as CMRS in order to establish a framework within which a provider can claim PMRS status (presumptively or otherwise). There are other approaches for identifying whether a licensee's proposed or existing operations should be classified one way or another, such as allowing the licensee, in the first instance, to make that determination with respect to its individualized operations, based on the existing definitions of PMRS and CMRS. The Commission suggested that changes to its approach of using a rebuttable PMRS presumption ''may now be warranted based on the development of CMRS and PMRS services and [the Commission's] experience with the application of the presumption, such as how parties have used it, how often and how successfully it has been challenged, and whether it tends to streamline the licensing processes or encumber them.'' The Commission observed that § 20.3 of the rules defines CMRS to include mobile services that are the ''functional equivalent'' of CMRS, and therefore—in combination with other Commission rules and processes—ensures that any service that amounts to the ''functional equivalent'' of CMRS is treated as such.

18. The Commission recognized, however, that elimination of § 20.9 in its entirety would also include deletion of § 20.9(a)(14)(ii), which enumerates several factors that the Commission may consider in determining whether a mobile service is the ''functional equivalent'' of CMRS in cases where an interested party challenges a claim that operations are presumptively classified as PMRS. The Commission sought comment on whether retaining § 20.9(a)(14) or any of its subsections would be useful ''as a practical and procedural set of guidelines'' for both mobile service providers and the Commission when applying the definitions of CMRS and PMRS, and whether it should move this language to § 20.3 or another section in part 20. Only two commenters addressed the issue. One argued for the removal of the PMRS presumption while the other requested that the Commission maintain sufficient clarity in the definition of, and requirements for, PMRS and CMRS classifications.

19. The Commission retains the key aspects of the PMRS presumption by revising its definition of Private Mobile Radio Service in § 20.3 to provide a party with a presumption that it meets that definition (as against a challenge that the service is CMRS), if the service in question does not meet the three specific elements for qualifying as a CMRS under paragraph (a) of the § 20.3 CMRS definition. In such case, a challenger would bear the burden of proving that the service meets paragraph (b) of the CMRS definition (*i.e.,* that it is the functional equivalent of a service that satisfies the paragraph (a) elements) and therefore does not qualify as PMRS. While the rules thus continue to recognize that a service not meeting the specific paragraph (a) elements of the CMRS definition is presumptively PMRS, the Commission declines otherwise to carve out the rebuttal process from its elimination of section 20.9. The Commission anticipates that the CMRS and PMRS definitions in § 20.3 as revised in this *Order* will provide sufficient clarity to enable the Commission, licensees and spectrum lessees, and members of the public to differentiate between CMRS and PMRS and, relatedly, to assess whether a licensee is offering a service that is the ''functional equivalent'' of CMRS. At the same time, The Commission has identified various benefits of eliminating the use of the scheme embodied in § 20.9, which has discouraged the flexible use of spectrum in the identified frequency bands and created unnecessary hurdles for a subset of mobile service providers.

20. In sum, the Commission sees no need to retain any of the § 20.9 provisions about whether service being provided in a particular frequency band is commercial or private, or to retain rebuttal procedures crafted as part of the § 20.9 approach. Even without § 20.9(a)(14), interested parties will continue to have avenues available to

[2] As the Commission explained in the NPRM, such CMRS obligations include, but are not limited to, roaming obligations, provision of E911 services, obligations pursuant to the Communications Assistance for Law Enforcement Act, and compliance with hearing aid compatibility requirements.

[3] This subsection's reference to the definition of CMRS is stated without limitation and therefore includes a service that is defined as CMRS under either the ''(a)'' or ''(b)'' paragraphs of the § 20.3 definition of CMRS.

[4] Note that this definition includes services meeting the three elements of the definition's (a) paragraph and services meeting the definition's (b) paragraph covering services that are the functional equivalent of those satisfying the three elements of paragraph (a).

[5] 47 CFR 20.3 (defining Private Mobile Radio Service as a ''mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service''); 47 U.S.C. 332(d)(3) (defining ''private mobile service'' as ''any mobile service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission'').

challenge whether an entity's operation is ''non-common carrier'' or ''private, internal communications.'' Elimination of the § 20.9(a)(14) process thus neither materially affects the opportunity for interested parties to challenge an entity's claim of private status, nor alters the distribution of the burden of proof in adjudicating such a challenge (*i.e.,* a party challenging a licensee's claim of private status bears the burden of presenting sufficient allegations of fact to overcome the presumptive validity of that claim). Similarly, the exemplary factors for determining whether a service is the ''functional equivalent'' of CMRS, discussed in the *CMRS Second Report and Order,* remain probative in potential challenges, even if they are no longer memorialized in the Commission's rules. Nonetheless, given concerns raised by commenters, and for ease of future reference for parties seeking to rely on them as illustrative examples, the Commission moves the ''functional equivalent'' exemplary factors to the definition of CMRS in § 20.3 and slightly revise the rule to indicate that reliance on these examples is permissible but not required. Finally, nothing in this action alters the Commission's authority, independent of § 20.9, to take enforcement action against a licensee that tries to avoid CMRS regulation by misrepresenting that its service is or will be operated on a ''non-common carrier'' or ''private, internal communications'' basis.

21. *Elimination of § 20.7.* Most commenters do not address the Commission's proposal to remove § 20.7, which lists certain services in various Commission rules parts that meet the statutory definition of ''mobile services.'' T-Mobile is the only party that raises a concern with removal of a specific subpart of the rule, § 20.7(h). Section 20.7(h) includes within the list of mobile services ''[u]nlicensed services meeting the definition of [CMRS] in § 20.3, such as the resale of [CMRS], but excluding unlicensed radio frequency devices under part 15 of this chapter (including unlicensed personal communications service devices).'' T-Mobile argues that this language represents an intentional decision by the Commission to exclude part 15 unlicensed services from the definition of ''mobile service'' in § 20.7. T-Mobile asks the Commission to either preserve § 20.7(h) or incorporate its wording into § 20.3.

22. The Commission eliminates § 20.7, which provides an outdated and incomplete list of some, but not all, services that meet the definition of ''mobile service'' as used in the Act. This approach is consistent with the Commission's elimination of § 20.9, in favor of relying instead on the definition of CMRS in § 20.3. As is the case with respect to the definition of CMRS, § 20.3 clearly articulates the definition of ''mobile service,'' consistent with the statutory definition. Elimination of § 20.7 will thus not affect the Commission's understanding or application of the term ''mobile service'' in the Act or under the Commission's rules.

23. Regarding the concern raised by T-Mobile about the regulatory categorization of part 15 unlicensed devices, the Commission found, in the *CMRS Second Report and Order,* that the definition of ''mobile service'' in the 1993 OBRA includes ''service for which a license is required in a personal communications service,'' and therefore concluded that ''mobile service'' does not include unlicensed PCS and part 15 devices. This action should in no way be construed as affecting the Commission's findings in the *CMRS Second Report and Order.* Nonetheless, to ensure that there is no confusion on this issue, the Commission revises § 20.3 to make clear that the term ''mobile service'' explicitly excludes unlicensed radio frequency devices under part 15 of the Commission's rules.

24. *Edits to parts 1, 4, and 9 of the Rules.* Consistent with the Commission's proposal in the NPRM and its efforts to streamline its rules, the Commission makes corrective edits to rule parts that errantly cross-reference § 20.9 for the definition of CMRS, rather than cross-referencing the definition in § 20.3, the definitions section for part 20. Specifically, § 4.3(f) of the rules, which defines ''wireless service providers'' that are subject to outage reporting requirements, cross-references section 20.9 for a definition of CMRS. Section 9.3, related to the provision of interconnected VoIP services, similarly defines CMRS as ''Commercial Mobile Radio Service, as defined in § 20.9 of this chapter.'' The Commission amends both sections to remove the reference to § 20.9 and refer instead to the definition of CMRS in § 20.3.

25. CTIA requested changes to § 1.907's definitions of Private Wireless Services and Wireless Telecommunications Services to remove cross-references to other CFR rule parts that appear in those definitions. The CMRS proceeding has focused on the treatment of services defined and regulated as PMRS and CMRS under part 20 of the Commission's rules and cross-referenced in several other related rules. While the definitions for which CTIA seeks modification are not coextensive with the definitions of PMRS and CMRS, the Commission sought broad comment in the CMRS proceeding on whether to eliminate the itemized, service-by-service approach to classifying wireless services that the Commission had superimposed over the statutory definitions, in favor of an approach that enabled applicants and licensees themselves to classify—under straightforward statutory definitions—what type of permitted flexible operations they had chosen to provide (rather than forcing them to proceed under a categorical framework that requires parties to seek an exception from the Commission when their choice of flexible operations will not line up with the correct statutorily-defined wireless classification that the rules are forcing them into). CTIA's proposal for eliminating the categorical list of services classified as Wireless Telecommunications Services under the § 1.907 definitions is virtually indistinguishable in these regards from the proposal the Commission made for CMRS, as the elimination of these categories from the Wireless Telecommunications Service definition will remove the needless inefficiency and reduce the rigidity of such a categorical approach, while leaving intact in the rule the critical classification benchmark—*i.e.,* the definition of ''telecommunications service'' in section 3 of the Act—on which applicants and licensees can rely in choosing to provide Wireless Telecommunications Service. In contrast, the Commission does not, in the CMRS proceeding, modify the § 1.907 definition of Private Wireless Service because this aspect of CTIA's proposals addresses a definition in the rules that does not expressly invoke a statutory definition to provide a ready benchmark that can replace the categories of service that are listed categorically as comprising (and defining) the Private Wireless Services. Accordingly, CTIA's proposal for this definition, whatever the merits, is not part of the regulatory changes that the Commission envisioned in this proceeding, and the Commission therefore denies this aspect of CTIA's request without prejudice.

26. *Regulatory Status on FCC Forms.* In the NPRM, the Commission requested comment on whether it would need to make changes to any of its forms if it were to eliminate § 20.9. For example, it noted that Form 603 (used for assignments and transfers of control) does not include an option for an assignee/transferee to indicate a different regulatory status for a license

at issue in the proposed transaction, and suggested that, if the Commission eliminated § 20.9, it would need to revise Form 603 to permit such a designation. The Commission also sought comment on whether the regulatory status options provided on Form 601 and other forms—''common carrier,'' ''non-common-carrier,'' and ''private, internal communications''—were confusing, and asked whether they should be replaced with or altered to include the CMRS/PMRS terminology.

27. Only one party addresses the NPRM questions about forms, recommending that the Commission retain the three regulatory status categories currently used on Form 601 and other forms—''common carrier,'' ''non-common carrier,'' and ''private/internal communications.'' The Commission decides not to replace the current form designations of ''common carrier,'' ''non-common carrier,'' and ''private, internal communications'' with the alternatives of CMRS or PMRS. The Commission concludes that the change would create a less detailed description of regulatory status for certain licensees. Further, the current designations, in combination with a filer's responses to form questions regarding the type of radio service being provided, are used by the Commission to determine, among other things, regulatory fees and which filings may need to go on an accepted for filing public notice. The Commission also declines to revise Form 601 or other forms to add an additional question asking an entity to distinguish whether it is providing, or plans to provide, ''CMRS'' and/or ''PMRS.'' Adding this to the Commission's forms and to ULS would be costly, without providing the Commission with additional useful information beyond what it already obtains from the combination of questions about regulatory status and type of radio service being provided.

28. The current ULS Form 601 permits an applicant to select the status of its radio service operation as ''common carrier,'' ''non-common carrier,'' or ''private, internal communications,'' or some combination, to the extent applicable. This status must be selected when an applicant first files for an authorization. Under this action, applicants in services previously covered by § 20.9 will have the same flexibility as other licensees that utilize ULS to select the appropriate status or statuses, without additional regulatory requirements. A licensee also can use Form 601 to modify its regulatory status to add an additional status or change the status under which it was originally licensed. Applications on Form 601 to modify regulatory status are processed as a minor modification to the subject authorization.

29. The current Form 603 does not permit a proposed assignee or transferee to make any selection regarding regulatory status. Rather, the proposed assignee or transferee receives the license with the regulatory status as designated by the assignor or the pre-transfer licensee. Because a change to Form 603 would require corresponding changes to ULS, including costly reprogramming and additional time to implement, the Commission directs staff to explore an interim process for permitting a proposed assignee or transferee to modify the regulatory status for a license as part of the assignment or transfer of control application, perhaps by permitting the applicants to provide in an exhibit a request for change. In the interim and as can be done under the Commission's current processes, assignees or transferees will be able to file a modification on Form 601 to change the regulatory status of a license obtained pursuant to a transaction after the transaction is consummated.

30. The current Form 608, Item 9, permits a proposed spectrum lessee to indicate at the time of filing an initial spectrum leasing application what regulatory status or statuses are applicable to its planned operations on the leased spectrum. Once a spectrum leasing arrangement is granted or accepted, as applicable, the spectrum lessee may file a lease modification on Form 608 to indicate a change in the regulatory status as application to its operations under the spectrum leasing arrangement.

31. *Other Issues.* Several commenters raise issues that were not discussed in the NPRM. For example, MSI and NPPD highlight several part 22 rules that they argue are ripe for reform, and ask the Commission to initiate a separate rulemaking to review these and other part 22 rules. Those issues are beyond the scope of the CMRS proceeding and the Commission does not address them here.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

32. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

33. The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Final Regulatory Flexibility Certification

34. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The Final Regulatory Flexibility Certification of the possible economic impact of the rule changes contained in the Report and Order was attached as Appendix B of the *Order.*

D. Contact Information

35. For further information regarding the *Order,* contact Kathy Harris at (202) 418–0609, *Kathy.Harris@fcc.gov,* or Thomas Reed at (202) 418–0531, *Thomas.Reed@fcc.gov.*

II. Ordering Clauses

36. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, and 332, that this *report and order* in WT Docket No. 16–240 *is adopted.*

37. *It is further ordered* that the *report and order shall be effective* 30 days after publication of a summary of the *report and order* in the **Federal Register**.

38. *It is further ordered* that part 1 of the Commission's rules, 47 CFR part 1, part 4 of the Commission's rules, 47 CFR part 4, part 9 of the Commission's rules, 47 CFR part 9, and part 20 of the Commission's rules, 47 CFR part 20, *are amended* as specified in Appendix A of the *Order,* effective 30 days after publication in the **Federal Register**.

39. *It is further ordered* that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of the *report and order* to Congress and to the Government Accountability Office.

40. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *report and order*, including the Final Regulatory Flexibility Certification, to

the Chief Counsel for Advocacy of the Small Business Administration.

41. *It is further ordered* that, if no petitions for reconsideration or applications for review are timely filed, this proceeding *shall be terminated* and the docket *closed*.

List of Subjects in 47 CFR Parts 1, 4, 9, and 20

Commercial mobile services, Disruptions to communications, Interconnected voice over internet protocol services, Practice and procedure.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 4, 9, and 20 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation of part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. In § 1.907, revise the definition for ''Wireless Telecommunications Services'' to read as follows:

§ 1.907 Definitions.

* * * * *

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

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 3. The authority citation of part 4 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of Pub. L. 73–416, 48 Stat. 1064, as amended, and section 706 of Pub. L. 104–104, 110 Stat. 56; 47 U.S.C. 151, 154(i)–(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, 615c, and 1302, unless otherwise noted.

■ 4. In § 4.3, revise paragraph (f) to read as follows:

§ 4.3 Communications providers covered by the requirements of this part.

* * * * *

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

* * * * *

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

■ 5. The authority citation of part 9 continues to read as follows:

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

■ 6. In § 9.3, revise the definition for ''CMRS'' to read as follows:

§ 9.3 Definitions.

* * * * *

CMRS. Commercial Mobile Radio Service, as defined in § 20.3 of this chapter.

* * * * *

PART 20—COMMERCIAL MOBILE SERVICES

■ 7. The authority citation for of part 20 continues to read as follows:

Authority: 47 U.S.C. Sections 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c unless otherwise noted.

■ 8. In § 20.3:

■ a. In the definition for ''Commercial mobile radio service'':

■ i. In paragraph (b), remove ''of this section'' and add ''of this definition'' in its place; and

■ ii. Add paragraphs (c) and (d); and

■ b. Revise the introductory text of the definition for ''Private Mobile Radio Service''.

The additions and revision read as follows:

§ 20.3 Definitions.

* * * * *

Commercial mobile radio service.

* * *

(c) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(d) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

* * * * *

Private mobile radio service. A mobile service that meets neither the paragraph (a) nor paragraph (b) definitions of commercial mobile radio service set forth in this section. A mobile service that does not meet the paragraph (a) definition of commercial mobile radio service in this section is presumed to be a private mobile radio service. Private mobile radio service includes the following:

* * * * *

§ 20.7 [Removed and Reserved]

■ 9. Section 20.7 is removed and reserved.

§ 20.9 [Removed and Reserved]

■ 10. Section 20.9 is removed and reserved.

[FR Doc. 2018–00919 Filed 2–20–18; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 816, 828, and 852

RIN 2900–AP82

Revise and Streamline VA Acquisition Regulation To Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014–V002)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final the proposed amendments to VA regulations. This rulemaking prescribes five new Economic Price Adjustment clauses for firm-fixed-price contracts, identifies VA's task-order and delivery-order ombudsman, clarifies the nature and use of consignment agreements, adds policy coverage on bond premium adjustments and insurance under fixed-price contracts, and provides for indemnification of contractors for medical research or development contracts. This document adopts the proposed rule published on March 13, 2017, as a final rule with five technical non-substantive changes.