Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF CTIA

I. INTRODUCTION.

CTIA[1] respectfully submits these comments in response to the Notice of Proposed Rulemaking ("*NPRM*") adopted by the Federal Communications Commission ("Commission") seeking comment on proposals to streamline the Commission's Part 20 rules.[2] CTIA agrees that Section 20.9's structure and purpose no longer match the highly competitive and innovative wireless marketplace and encourages the Commission to move forward with harmonizing and streamlining its regulations in this regard. The changes proposed in the *NPRM* will bring the rules for services like Personal Communications Services ("PCS") in line with regulations governing spectrum used for other mobile wireless services, such as those in the 700 MHz band,

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[1] CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C

[2] *See Amendments To Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption*, Notice of Proposed Rulemaking, 31 FCC Rcd. 8470 (2016).

Advanced Wireless Services ("AWS"), and the 600 MHz band and will also afford wireless providers with the flexibility needed to develop and deploy new innovative 5G and Internet of Things products and services. In adopting the proposed modifications, however, the Commission should ensure that any changes to the rules do not inadvertently or unnecessarily disrupt existing licensees' reasonable expectations regarding the terms and conditions of their licenses.

II. CTIA SUPPORTS THE COMMISSION'S EFFORTS TO STREAMLINE THE PART 20 RULES TO REFLECT TODAY'S COMPETITIVE WIRELESS MARKETPLACE.

Section 20.9 of the Commission's rules enumerates a list of services that "shall be treated as common carriage services and regulated as commercial mobile radio services ['CMRS']" pursuant to Section 332 of the Communications Act ("Act").[3] In other words, the services

[3] 47 C.F.R. §20.9. Section 332 of the Act recognizes two types of mobile service—commercial mobile radio service (which receives common carrier treatment) and private mobile service (which does not). The Act defines CMRS as (1) provided for profit; (2) interconnected; and (3) offered to the public or such classes of users as to be effectively available to a substantial portion of the public. A private mobile service, on the other hand, is defined in the negative—*i.e.*, it is not a commercial mobile service or the functional equivalent of a commercial mobile service. 47 U.S.C. §332(c), (d). The Commission's rules provide for CMRS treatment of a mobile service that is the functional equivalent of a commercial mobile service and further note that a mobile broadband Internet access service (as defined in Section 8.2 of the rules) is CMRS or the functional equivalent of CMRS. *See* 47 C.F.R. § 20.3 (stating that the "functional equivalent of a [CMRS] . . ., including a mobile broadband Internet access service" is CMRS); *see also* Protecting and Promoting the Open Internet, *Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd. 5601 ¶ 388 (2015) ("We also find that mobile broadband Internet access service is a commercial mobile service. In any event, however, even if that service falls outside the definition of 'commercial mobile service,' we find that it is the functional equivalent of a commercial mobile service"); *id*. ¶¶ 48, 408. CTIA and other parties have sought judicial review of the FCC's regulatory classification of mobile broadband and the matter is currently before the U.S. Court of Appeals. *See* Petitioner CTIA's Petition for Rehearing En Banc, *U.S. Telecom Ass'n. v. Fed. Commc'ns Comm'n*, 825 F.3d 674 (D.C. Cir. 2016) (No. 15-1063). Nothing in this filing waives CTIA's right to continue to pursue that judicial review.

delineated under Section 20.9—including PCS—are presumptively common carrier, CMRS services. The rule was promulgated in the wake of the 1993 Omnibus Budget Reconciliation Act,[4] at a time when "many wireless rule parts drew clear lines between commercial and private operation in terms of service rules, obligations, and usage."[5] Since then, however, there have been substantial changes in the wireless industry and the Commission has provided greater flexibility in its rules for new services like the AWS bands, Wireless Communications Service ("WCS"), 700 MHz band service,[6] and 600 MHz band service, which do not carry with them the same presumption, but instead allow licensees to select whether they will be providing common carrier services, non-common carriers services, or both.

As the Commission notes, the disparate treatment of mobile services delineated in Section 20.9—as compared to those with more flexible rules—"can result in application processing inefficiencies and delays for the affected services."[7] CTIA therefore supports the Commission's efforts to streamline the wireless application process by eliminating Section 20.9, which contains the CMRS presumption. Although, as the Commission notes in the *NPRM*, entities are permitted to seek waiver of the requirement that particular operations be treated as CMRS,[8] elimination of the rule that includes the CMRS presumption would remove any need for

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4 *See generally Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd. 1411 (1994).

5 *NPRM* ¶ 3.

6 *Id*. ¶ 7 (noting that "[a]pplicants and licensees in [the AWS, WCS, 700 MHz, and 218-219 MHz] services are free to choose on their application 'Common Carrier,' 'Non-Common Carrier,' and/or 'Private, Internal Communications' as their applicable regulatory status"); *see also id*. ¶ 15.

7 *Id*. ¶ 15.

8 *Id*. ¶ 4.

costly and time-consuming waiver requests.[9] By reducing this regulatory burden on wireless providers, the Commission can promote "more efficient and timely use of licensed spectrum" to the ultimate benefit of wireless consumers.[10]

In addition to reducing regulatory burdens, the proposed rule change would generally be consistent with the Commission's ongoing efforts to make its wireless licensing rules more flexible, a move that allows providers to more quickly respond to competitive forces and changing consumer needs and demands. This flexibility will be critical as wireless providers develop and deploy new innovative products and services—including next-generation 5G technologies and Internet of Things applications.

III. THE COMMISSION'S RULE MODIFICATIONS SHOULD NOT ALTER LICENSEES' EXPECTATIONS REGARDING THEIR LICENSES.

In implementing harmonization, the Commission must ensure that it does not inadvertently disrupt licensees' expectations regarding their existing licenses. As the Commission explains, the proposal to eliminate Section 20.9 "is narrow" and is intended "to eliminate an unnecessary burden upon certain licensees and applicants in services named in that section. There would be *no change* in the obligations imposed upon entities providing commercial or private mobile radio service."[11] CTIA appreciates this clarification and urges the

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9 *Id*. ¶ 10 (noting that elimination of Section 20.9 would permit applicants and licensees to "simply inform the Commission in initial, modification, or assignment applications of their regulatory status").

10 *Id*. ¶ 11.

11 *Id*. ¶ 23 (emphasis added). The Commission similarly indicates that the other conforming proposals contained in the *NPRM* are intended to have no material impact on the application of those provisions. For example, the Commission indicates that the proposed elimination of Section 20.7, which includes a list of services that fall within the definition of "mobile services," "would not change the definition of 'mobile service' contained in section 20.3." *Id*. ¶ 21. Moreover, the Commission explains that in eliminating sections 20.7 and 20.9, it does "not intend to change either any substantive CMRS regulatory policies with our proposal or other

Commission to expressly state this intent in any order adopted as part of this proceeding. An affirmative expression of such intent is critical to ensuring that licensees' reasonable investment-backed expectations concerning the terms and conditions of their licenses—especially with respect to permissible services and technologies—are not inadvertently and unnecessarily disrupted.

Moreover, in addressing the Part 20 rules, the Commission should make clear that licensees may continue to provide *both* commercial mobile and private mobile services, subject, of course, to compliance with the regulatory obligation applicable to the service in question. When using the same or different spectrum to offer multiple services, potentially even to different customer bases, CMRS obligations must not inadvertently apply to offerings that do not meet the statutory test as a result of the rule changes proposed here. Current application forms allow licensees to assert that they may offer both common carrier and non-common carrier services. In this proceeding, the Commission should clarify that this option will remain available and that nothing in its rules is intended to conflict with the Act, which otherwise provides that only common carriers may be subject to common carrier regulation.[12]

substantive policies pursuant to existing Commission rules affecting the licensees in the services that an amended 20.3 would address." *Id*. ¶ 23. The Commission likewise characterizes its proposed amendments to Sections 9.3 and 4.3(f) as "corrective edit[s]." *Id*. ¶ 19, 20.

[12] 47 U.S.C. §332 (c)(2).

IV. CONCLUSION.

CTIA supports the Commission's proposal to streamline and harmonize the Part 20 rules by eliminating the CMRS presumption contained in Section 20.9 and urges the Commission to expressly state that any such change does not alter existing licensees' expectations regarding the terms and conditions of their licenses.

Respectfully submitted,

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