

(1) The requirement to implement controls meeting reasonably available control technology (RACT) for NO_x; and

(2) Nonattainment area new source review requirements for major new and modified sources as they apply to emissions of NO_x.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 05-265; DA 14-865]

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration; denial.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) addresses a petition filed by Blanca Telephone Company (Blanca), seeking reconsideration of the Commission's decision to reject a uniform time limit or "shot clock" on all data roaming negotiations. The Bureau finds that Blanca presents no material error or omission in the Commission's Data Roaming Order, or any additional new facts warranting reconsideration. In the Data Roaming Order, the Commission's decision to reject a single time limit for all negotiations but to consider requests for time limits on a case-by-case basis provides appropriate flexibility in negotiations that will involve a wide range of evolving technologies and commercial contexts, while allowing parties to seek Commission intervention if a negotiating partner unduly delays a particular negotiation.

DATES: Effective July 29, 2014.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, (202) 418-7369, email peter.trachtenberg@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Order on Reconsideration, WT Docket No. 05-265, DA 14-865, adopted June 25, 2014, and released June 25, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554.

Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or email FCC@BCPIWEB.com. Copies of the Order on Reconsideration also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 05-265. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

1. *Data Roaming Order*, 76 FR 26199, May 6, 2011. Data roaming allows consumers to obtain data services over their mobile devices when they travel outside their own provider's network coverage areas, by relying on another provider's network. In the Data Roaming Order, the Commission sought to promote consumer access to nationwide mobile broadband service by adopting a rule requiring facilities-based providers of commercial mobile data services to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations. To ensure that the data roaming rule is sufficiently flexible to apply to a wide range of evolving technologies and commercial contexts, the Commission allowed providers "[to] negotiate the terms of their roaming arrangements on an individualized basis." As the Commission explained, this means that providers may tailor roaming agreements to "individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms."

2. The Commission made clear that, once a provider requests a data roaming arrangement, a would-be host provider "has a duty to respond promptly to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding that request." The Commission also addressed commenter proposals designed to limit delay tactics in data roaming negotiations, including proposals to establish a mandatory, uniform time limit, described as a "shot clock," for all negotiations subject to the Commission's data roaming rule. The Commission declined to adopt a mandatory, uniform time limit based on the Commission's assessment that some data roaming negotiations may be "more complex or fact-intensive" than others and require more time. Instead, the Commission determined that if a provider believes that another provider is unduly delaying a data roaming

negotiation, it may ask the Commission to set a time limit for that particular negotiation.

3. The Commission provided that it would address all such individual requests for a time limit, and any other disputes over a provider's conduct during data roaming negotiations, on a case-by-case basis, taking into consideration the totality of the circumstances. Among the factors that the Commission stated it may consider in determining the commercial reasonableness of a host provider's conduct during negotiations are whether the provider "has responded to the request for negotiation," whether it has engaged in "a persistent pattern of stonewalling behavior," and "the length of time since the initial request." The Commission held that a party to a data roaming dispute may seek relief through either a petition for declaratory ruling or a formal or informal complaint, and it established specific dispute resolution procedures to ensure the prompt resolution of any data roaming disputes brought before it.

4. *Blanca Telephone Company Petition for Reconsideration*. On June 6, 2011, Blanca filed the instant Petition, which requests that the Commission "reconsider and reverse its decision declining to adopt a time limit for roaming negotiations" that are subject to the Commission's data roaming requirements. Blanca explains that the proposed time limit or "shot clock" would allow "either party to a negotiation, after a reasonable period such as 60 days," to refer the matter to the Commission for resolution pursuant to the dispute resolution processes established in the Data Roaming Order. Blanca contends that the Commission's decision to address claims of undue delay on a case-by-case basis, rather than establishing a uniform time limit for all data roaming negotiations, is flawed in two respects. First, it argues that the Commission's stated rationale for this decision—*i.e.*, that some negotiations may be more complex or fact-intensive than others and thus require more time—failed to quantify the actual number of negotiations that are likely to involve complex issues. According to Blanca, "[i]f it turns out to be the case that relatively few negotiations fall into the 'complex' category," then the Commission's determination "will have imposed an unwarranted disadvantage on smaller rural and regional" providers seeking data roaming arrangements with nationwide providers. Second, Blanca maintains that the Commission's decision to impose time limits on a case-by-case basis will place an

additional burden on smaller carriers that lack bargaining power by requiring them to demonstrate the need for a time limit in the course of their negotiations with larger national providers.

5. On November 21, 2011, the Commission released a Public Notice, 76 FR. 74721, December 1, 2011, announcing the filing of the Petition and seeking comment. In response, the Commission received three comments and three replies. Other than AT&T, all commenters, including several providers and associations, supported the petition.

6. Pursuant to section 1.429 of the Commission's rules, parties may petition for reconsideration of final orders in a rulemaking proceeding. Reconsideration is generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.

7. In 2011, in order "to allow the agency to resolve certain petitions for reconsideration more efficiently and expeditiously," the Commission amended its rules to delegate authority to the relevant bureau or office to dismiss or deny petitions filed in either rulemaking or non-rulemaking proceedings, if the petition "plainly does not warrant consideration by the full Commission." Among the kinds of petitions that the Commission found would satisfy this standard are those that fail to identify any material error, omission, or reason warranting reconsideration, or that rely on arguments that have been fully considered and rejected by the Commission within the same proceeding. In this case, as discussed below, Blanca's first argument about the likely frequency of complex data roaming negotiations that may require more time than permitted under a "shot clock" is a wholly speculative one that fails to identify any material error, omission, or reason warranting reconsideration. Blanca's second argument, based on the incentives of the largest mobile broadband providers, was specifically considered and rejected in the Data Roaming Order, and in any event also fails to identify any material error, omission, or reason warranting reconsideration. Given these circumstances, the Bureau exercises its delegated authority under section 1.429(l) of the rules to address and deny Blanca's petition.

8. As noted above, Blanca first challenges the rationale for the Commission's decision to reject a "shot clock" in favor of a case-by-case approach for addressing allegations of

undue carrier delay of negotiations, which the Commission preferred because some negotiations may be more complex or fact-intensive than others. Blanca argues that the Commission failed to quantify the actual number of negotiations that are likely to involve complex issues. It hypothesizes that it may "tur[n] out to be the case" that there are relatively few complex negotiations requiring additional time. The Bureau finds that this kind of speculation about the nature of future data roaming negotiations under the Commission's new rules does not present a material error, omission or reason warranting reconsideration. As these rules and procedures regarding negotiations over data roaming arrangements were newly created in this proceeding, there is little track record upon which to calculate the likely number of complex negotiations that may occur, and Blanca has provided nothing concrete upon which to base such a projection. Moreover, the very nature of the evolving mobile broadband industry, the variable nature of the network configurations, services, technologies, and business plans involved, and the individualized nature of data roaming agreements make it unrealistic to predict the relative number of data roaming negotiations that may raise complex or fact-intensive issues at any given time. Further, this uncertainty itself counsels against establishing a uniform deadline in all cases, particularly given the ability of providers under the rule to negotiate individualized data roaming agreements. Blanca's argument therefore does not support reconsideration of the Commission's approach.

9. Blanca and other commenters supporting the petition also argue the Commission failed to consider the larger providers' greater bargaining power and lack of incentives to enter into roaming agreements. They contend that the Commission's approach exacerbates this problem and that only a "shot clock" will adequately address incentives to delay. The Bureau disagrees. The Commission carefully considered the impact of incentives on parties' negotiating conduct. In deciding to adopt its data roaming rule, the Commission highlighted the concern that "consolidation may have . . . reduced the incentives of the largest two providers to enter into [data roaming] arrangements by reducing their need for reciprocal roaming." Further, it adopted specific measures to address the possibility that providers might engage in unreasonable delay. In particular, the Commission imposed on providers a

duty to respond promptly to requests for data roaming and avoid actions that unduly delay negotiations regarding that request, and it provided an enforceable remedy. It further provided that if a requesting provider believes that the other party is violating its duty by unduly delaying the negotiation, the provider may bring such claim to the Commission at any time and ask the Commission to set a deadline for one or both parties to act. The Commission also emphasized that "in the event a would-be host provider violates its duty by actions that unduly delay or stonewall the course of negotiations, [the Commission] stands ready to move expeditiously with fines, forfeitures, and other appropriate remedies, which should reduce any incentives to delay data roaming negotiations."

10. Accordingly, Blanca's argument based on disparate bargaining power has already been fully considered and rejected by the Commission. It also identifies no material error, omission, or reason warranting reconsideration. While Blanca and other commenters allege that roaming negotiations can take inordinate periods of time, they fail to demonstrate that the processes established in the Data Roaming Order rules are inadequate to address problems of unreasonable delay. They offer no reason why providers cannot avail themselves of the established remedies, including the ability to ask the Commission to set a deadline for a particular negotiation, or evidence that providers have utilized current procedures and found them ineffective.

11. In conclusion, the Commission finds nothing in the arguments or the record justifying reconsideration of the Commission's approach, which was designed to ensure that the data roaming rule remains sufficiently flexible to apply to a wide range of evolving technologies and commercial contexts, while allowing individual providers to seek expedited intervention by the Commission when a provider is unduly delaying the course of a data roaming negotiation. Accordingly, the Petition is denied. The Bureau reminds parties, however, that the Commission "intend[s] to closely monitor further development of the commercial mobile broadband data marketplace and stand[s] ready to take additional action if necessary to help ensure" that the goals of the data roaming proceeding are achieved.

12. Accordingly, *it is ordered*, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 301, 303, 304, 309, 316, 332, and 405 of the Communications Act of 1934, as amended, and Section 706 of the

Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154, 301, 303, 304, 309, 316, 332, 405, and 1302, and the delegated authority under Section 1.429 of the Commission's rules, 47 CFR 1.429, that this Order on Reconsideration *is adopted*, effective on publication of the text or summary thereof in the **Federal Register**.

13. *It Is Further Ordered*, pursuant to the authority contained in Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and Section 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration filed by Blanca Telephone Company on June 6, 2011, *is denied*.

Federal Communications Commission.

Roger Sherman,

Chief, Wireless Telecommunications Bureau.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1816, and 1852

RIN 2700-AE08

NASA Federal Acquisition Regulation Supplement (NFS): Contractor Whistleblower Protections

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA is issuing an interim rule amending the NASA FAR Supplement (NFS) to implement statutory requirements providing whistleblower protections for contractor and subcontractor employees and to address the allowability of legal costs incurred by a contractor related to whistleblower proceedings.

DATES: *Effective date:* July 29, 2014. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in this interim rule in major modifications to contracts and orders awarded prior to the effective date of this interim rule.

Comment date: Comments on this interim rule should be submitted in writing to the address shown below on or before September 29, 2014.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700-AE08 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via email at leigh.pomponio@NASA.gov. Comments

received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT:

Leigh Pomponio, NASA, Office of Procurement, email: leigh.pomponio@NASA.gov or phone: 202-358-0592.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises the NFS to implement a policy providing whistleblower protections for contractor and subcontractor employees. This rule implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239). Section 846, entitled Protection of Contractor Employees from Reprisal for Disclosure of Certain Information, and Section 827, entitled "Enhancement of Whistleblower Protections for Contractor Employees," made extensive changes to 10 U.S.C. 2409, entitled "Contractor employees: protection from reprisal or disclosure." Paragraph (g) of section 827 amended paragraph (k) of 10 U.S.C. 2324, "Allowable costs under defense contracts" which is also applicable to NASA contracts. Paragraph (g) is implemented by this interim rule.

Paragraph 827(i)(1) specifies that the amendments made by section 827 are applicable to—

Contracts awarded on or after the effective date;

Task orders entered into on or after the effective date, pursuant to contracts awarded before, on, or after such date; and

Contracts awarded before the effective date, which are modified to include a contract clause providing for the applicability of such amendments.

Paragraph 827(i)(3) requires that at the time of any major modification to a contract that was awarded before the effective date, the head of the contracting agency shall make best efforts to include, in the contract, a clause providing for the applicability to the contract of the amendments made by section 827.

Section 846 of the NDAA for FY 2008 and Section 827 of the NDAA for FY 2013 created a standalone statute for NASA that is not dependent on the Federal Acquisition Regulation (FAR) coverage. The NASA contractor

whistleblower rule is based on an independent statute that applies only to Title 10 agencies. Section 828, Pilot Program for Enhancement of Contractor Whistleblower Protections, of the NDAA for FY 2013 has been implemented in the FAR; see FAR Case 2013-015, 78 FR 60169, <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/html/2013-23703.htm>. Section 828 establishes a four-year "pilot program" to provide enhanced whistleblower protections for employees of civilian agency contractors and subcontractors and suspend the use of FAR 3.901 through 3.906.

The FAR also incorporates sections 827(g) and 828(d) of the NDAA for FY 2013 (Pub. L. 112-239); see FAR Case 2013-017, 78 FR 60173, <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-23764.pdf>, which address legal costs incurred by a contractor in connection with a proceeding commenced by a contractor employee submitting a complaint under the applicable whistleblower section.

B. Discussion and Analysis

The current FAR addresses this subject at subpart 3.9. This rule will add NASA-unique requirements at Subpart 1803.9 of the NFS, entitled "Whistleblower Protections for Contractor Employees." The subpart covers the policy, procedures for filing and investigating complaints, remedies, clause prescriptions, and a related clause at NFS 1852.203-71, entitled "Requirement to Inform Employees of Whistleblower Rights".

This interim rule also adds a prescription at 1816.3 and a clause 1852.216-90, "Allowability of Legal Costs Incurred in Connection with a Whistleblower Proceeding" to implement paragraph (g) of section 827 which addresses treatment of cost incurred in connection with whistleblower proceedings. Due to the effective date of the Act, and because the Act encourage agencies to modify contracts (at the time of any major modification to a contract) that were awarded before the effective date of the Act, it is necessary to create a revised cost principle applicable to any task orders issued against contracts awarded prior to the effective date of this regulation and any contracts modified to implement section 827. Otherwise, FAR clause 52.216-7, Allowable Cost and Payment governs.

C. Changes to NFS

The statutory changes to 10 U.S.C. 2409 made by section 846 of the National Defense Authorization Act for Fiscal Year 2008 and section 827 of the National Defense Authorization Act for