**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Application of Section 333 of the Communications Act to the Testing of Counter-Unmanned Aircraft Systems Technologies | ) | |
| | ) | |
| Unleashing American Drone Dominance | ) | GN Docket No. 26-74 |
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**PETITION FOR RECONSIDERATION OR CLARIFICATION**


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## PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

CTIA[1] submits the following Petition for Reconsideration and/or Clarification in response to the Experimental Testing Declaratory Ruling,[2] one of four related Federal Communications Commission ("FCC" or "Commission") actions on delegated authority in light of the SAFER SKIES Act.[3] Together they take the unprecedented step of opening the door for non-federal actors to test, market, import, and operate jamming systems, for Counter-Unmanned

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[1] CTIA – The Wireless Association® ("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 providers, device manufacturers, and 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. CTIA represents a broad diversity of stakeholders, and the specific positions outlined in these comments may not reflect the views of all individual members. 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] *Application of Section 333 of the Communications Act to the Testing of Counter-Unmanned Aircraft Systems Technologies; Unleashing American Drone Dominance*, Declaratory Ruling, DA 26-654 (WTB/OET rel. July 2, 2026) ("Experimental Testing Declaratory Ruling").

[3] *See* News Release, FCC, FACT SHEET: Supporting State, Local, and Tribal Efforts to Counter Drone Threats (July 2, 2026), https://docs.fcc.gov/public/attachments/DOC-422788A1.pdf.

Aircraft Systems ("C-UAS") purposes. CTIA is filing petitions for reconsideration and/or clarification of each of the four orders.[4] In compliance with FCC rules,[5] CTIA is submitting separate petitions for each order, but because the four orders are interrelated, each petition discusses all of them. **The specific relief requested in this Petition is in Section V: THE EXPERIMENTAL TESTING DECLARATORY RULING DOES NOT COMPORT WITH CIRCUIT COURT PRECEDENT and Section VI: CONCLUSION.**

Malicious activities involving Unmanned Aircraft Systems ("UAS") are a threat that can and should be addressed. Congress adopted the SAFER SKIES Act, and the Departments of Justice ("DOJ") and Homeland Security ("DHS") issued an accompanying Interim Final Rule ("IFR"), to enable State, local, Tribal, and territorial law enforcement and correctional agencies ("SLTT" or "SLTT agencies") to detect and mitigate credible threats that UAS pose to the safety or security of people, facilities, and assets. CTIA supports actions by DOJ, DHS, the FCC, and other federal agencies to advance the SAFER SKIES Act's mission. It is no less important, however, for the Commission to continue to fulfill its obligations under Title III of the Communications Act—obligations that are undisturbed by the SAFER SKIES Act—to avoid creating new risks to public safety in the process.

By its nature, jamming of RF signals is indiscriminate, disrupting all communications on the affected frequencies, whether they be intended targets or nearby, lawful communications. As

[4] The interests of CTIA, which represents the U.S. wireless communications industry, are adversely affected by all four of the orders. As discussed throughout this filing, each of the orders increases the risk of unwanted interference to radio communications, including to the services provided by CTIA's members. *See* 47 C.F.R. § 1.106(b)(1). CTIA participated in the Drone Dominance Proceeding, filing comments that raised concerns regarding C-UAS jamming technologies and the prohibition on interference in 47 U.S.C. § 333. CTIA has had no prior opportunity, however, to raise the issues addressed in this Petition because the Drone Dominance Public Notice did not identify them, and the action that is the subject of this Petition was issued without notice or opportunity to comment. *See id.*

[5] 47 C.F.R. § 1.44(c).

the SAFER SKIES Act and the IFR recognize, the FCC has a continuing obligation to adhere to its statutory responsibilities under Sections 302 and 333 of the Communications Act to protect lawful communications, even as federal agencies collectively seek to facilitate SLTT agency C-UAS operations. This filing identifies gaps in the FCC's recent actions and seeks reconsideration and/or clarification to ensure that guardrails are in place to prevent harmful interference to lawful communications. The FCC actions also trigger questions about the interplay between Section 333 of the Communications Act and the SAFER SKIES Act with respect to the introduction of jamming by non-federal actors.

## I. BACKGROUND AND SUMMARY.

In December 2025, Congress passed the SAFER SKIES Act to provide a framework for SLTT agencies to exercise C-UAS authority.[6] Under that statute, SLTT agencies may, among other things, detect, identify, monitor, and track UAS; disable UAS by intercepting or interfering with communications used to control them; confiscate UAS; and damage or destroy them. The statute limits C-UAS systems used by SLTT law enforcement or correctional agencies acting under the SAFER SKIES Act to systems that are included on a list of authorized systems maintained jointly by the DOJ, DHS, DOD, DOT, FCC, and NTIA. The statute also provides SLTT agencies with an exemption from certain enumerated federal laws; the Communications Act is not among them.

DOJ and DHS published an IFR, effective July 1, 2026, adopting interim regulations to implement the SAFER SKIES Act.[7] The IFR explicitly states in several instances that the

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[6] *See* National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, §§ 8601–07, 139 Stat. 718, 1938–45 (2025) ("SAFER SKIES Act"); *see also* 6 U.S.C. § 124n (codifying § 8602 of the SAFER SKIES Act).

[7] *See* Counter-UAS Authority for State, Local, Tribal, and Territorial Law Enforcement and Correctional Agencies, 91 Fed. Reg. 41466 (July 6, 2026) ("IFR").

SAFER SKIES Act does not exempt SLTTs' C-UAS activities from the requirements of the Communications Act, for example:

> Notwithstanding the foregoing statutory changes, the SAFER SKIES Act did not amend or waive the applicability of other Federal statutory provisions that may govern or proscribe SLTT agencies' otherwise authorized activity, including those in the Communications Act or other regulations governing access to spectrum. *See, e.g.*, 47 U.S.C. 301 (licensing and authorization), 47 U.S.C. 302 (interfering devices), 47 U.S.C. 333 (jamming), 47 U.S.C. 605 (unauthorized transmissions).[8]

The IFR also says that:

> Consistent with the SAFER SKIES Act, the rule does not change the applicability of the Communications Act, see 47 U.S.C. 301 *et seq., or implementing rules administered by the FCC that relate to spectrum licensing, equipment authorization, and harmful interference to authorized services*, among other things. SLTT agencies thus remain subject to applicable provisions that may govern or proscribe activities otherwise authorized by this rule.[9]

The IFR envisioned a continuing FCC-led process for any SLTT C-UAS operations that "involves the emission of radiowaves,"[10] including that an SLTT agency "must obtain authorization to use that system consistent with Title III of the Communications Act," and "must comply with any relevant [FCC] regulations, policies, and guidance[.]"[11] The IFR notes that the FCC "will also issue waivers, as appropriate, to C-UAS equipment vendors and manufacturers to allow them to import and sell C-UAS mitigation equipment[.]"[12]

Immediately following the IFR, on July 2, 2026, FCC bureaus and offices adopted four orders and declaratory rulings enabling the use, testing, marketing, and importation of C-UAS:

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[8] IFR at 41468.

[9] *Id.* at 41469 (emphasis added).

[10] *Id.* at 41468.

[11] *Id.* at 41491.

[12] *Id.*

1. Sale, Importation and Equipment Authorization Waiver Order[13]
2. Blanket Special Temporary Authority for C-UAS Spectrum Order[14]
3. Counter-UAS Operations by SLTT Authorities Declaratory Ruling[15]
4. Experimental Testing of C-UAS Equipment Declaratory Ruling[16]

CTIA's intention is not to disrupt implementation of SAFER SKIES Act-enabled C-UAS activities, but rather to ensure the FCC's actions to facilitate C-UAS meaningfully addresses the risk that C-UAS jamming poses to nearby lawful communications, including public safety communications. Through these four actions, the FCC is opening the door for non-federal entities to use jamming devices for the first time, but without incorporating important safeguards that would sustain the agency's long-standing duty to prevent harmful interference to lawful communications.

The text, structure, and purpose of the Communications Act make clear and unambiguous that the primary purpose of the FCC's spectrum oversight is to *prevent* interference. Indeed, the reason the federal government first began regulating spectrum use in the early twentieth century was "for the purpose of preventing or minimizing interference between stations."[17] The Communications Act directs that the Commission "shall" take action "as it may deem necessary to prevent interference between stations,"[18] with no allowance for authorizing intentional

[13] *Counter-UAS Spectrum Authority for State, Local, Tribal, and Territorial Law Enforcement and Correctional Agencies under the SAFER SKIES Act; Unleashing American Dominance*, Order, DA 26-657 (OET rel. July 2, 2026) ("Equipment Authorization Waiver Order").

[14] *Counter-UAS Spectrum Authority for State, Local, Tribal, and Territorial Law Enforcement and Correctional Agencies under the SAFER SKIES Act; Unleashing American Drone Dominance*, Order, DA 26-656 (WTB/OET/PSHSB/SB/MB rel. July 2, 2026) ("Special Temporary Authority Order").

[15] *Application of Section 333 of the Communications Act to Development or Operations of Counter-Unmanned Aircraft Systems for the Federal Government and under the SAFER SKIES Act; Unleashing American Drone Dominance*, Declaratory Ruling, DA 26-655 (WB rel. July 2, 2026) ("C-UAS Operations Declaratory Ruling").

[16] Experimental Testing Declaratory Ruling.

[17] Radio Act of 1912, Pub. L. No. 62-264, § 4, 37 Stat. 302, 304 (1912).

[18] 47 U.S.C. § 303(f).

interference. And Section 333 imposes a general prohibition on "interfer[ing] with or caus[ing] interference to any radio communications of any station licensed or authorized" for non-federal use by the FCC.[19]

As the FCC has acknowledged, the use of jamming imperils important lawful communications and raises public safety concerns of its own. Jamming risks blocking or degrading all nearby communications on the targeted spectrum, not just nefarious UAS activity. Jamming frequencies on commercial wireless networks means potentially blocking 911 calls and texts, first-responder communications, Wireless Emergency Alerts, and other safety-related communications. This is not a theoretical risk, but a predictable outcome.

We ask the Bureaus to reconsider the absence of explicit guardrails in the Equipment Authorization Waiver Order and in the Special Temporary Authority Order to protect lawful communications from harmful interference. The FCC should consider the extent to which it is possible to engage in C-UAS jamming without interfering with lawful communications, and should put strict, explicit controls into place to address those interference risks. SLTT agencies that propose to use jamming or their equipment vendors should first be required to demonstrate that they can do so without interrupting other lawful communications.[20] To that end, at a minimum, the FCC should begin with a carefully monitored pilot program to assess the risks of C-UAS jamming and how to mitigate those risks, using the results to craft appropriate regulation.

Finally, the Bureaus should reexamine the Section 333 analyses in the Counter-UAS Operations by Local Authorities Declaratory Ruling and the Experimental Testing of C-UAS Equipment Declaratory Ruling. Those decisions, which have implications beyond C-UAS

[19] 47 U.S.C. § 333.

[20] *See also* Comments of CTIA, GN Docket No. 13-111, at 6, 27-3 (Dec. 29, 2025) (advocating pilot testing and other specific steps the Commission should take to reduce risks to lawful communications).

activities, do not properly address legal standards and precedents, and should be set aside or, at a minimum, clarified.

## II. THE EQUIPMENT AUTHORIZATION WAIVER ORDER, WHICH FORGOES THE FCC'S LONGSTANDING, V

### A. It Is Unclear What Standards Will Be Used to Assess the Interference Risks of C-UAS Jamming Equipment for Inclusion on the IFR's Authorized Systems List.

As discussed in the Background and Summary section above, the IFR acknowledged that nothing in the SAFER SKIES Act eliminated FCC jurisdiction or application of the Communications Act to C-UAS equipment and operation. Yet the Equipment Authorization Waiver Order minimizes the interference protections that are at the core of the equipment authorization process and associated service technical rules, rather than conditioning the waiver on compliance with safeguards to ensure that Congress's Title III interference protection objectives are addressed.

The Commission is the foremost expert on RF interference and risks to non-federal spectrum users. That expertise is reflected in its longstanding equipment authorization process, which is the best option for ensuring that RF equipment deployed in the United States adheres to robust protections against harmful interference. The Equipment Authorization Waiver Order's faulty premise that FCC equipment authorization is unnecessary in light of the IFR's Authorized Systems List (the "List") adopted by a multi-agency group falls short because it is unclear how those federal agencies will assess the interference risk of C-UAS jamming equipment to lawful communications, what standards or requirements will be used to put systems on the List, or what role the FCC (which should have a leading role on spectrum use and interference) will play.[21]

[21] *See* Equipment Authorization Waiver Order ¶ 9, waiving 47 C.F.R. §§ 2.803, 2.1203, 2.1204, and 2.805 ("all C-UAS equipment on the authorized systems and technologies lists has been tested and approved for C-UAS operation by Federal agencies.").

The Equipment Authorization Waiver Order readily acknowledges that the four FCC rules it waives "are all designed to prevent unauthorized RF devices from causing harmful interference to authorized stations or otherwise harming public safety."[22] Those rules stem from Section 302 of the Communications Act, which authorizes the Commission to adopt rules governing the interference potential of devices that emit RF energy that could cause harmful interference to radio communications.[23] The FCC has adopted such rules after public participation through notice and comment rulemakings and amended them over time to address changes in technologies and uses. Rather than crafting targeted waiver relief addressing discrete subsections or paragraphs of the waived Part 2 rules, the Equipment Authorization Waiver Order concludes that the IFR process for adding C-UAS jamming devices to the Authorized Systems List is an adequate substitute for the clear and thorough authorization process established and refined over the years by the government's expert agency on radio communications and interference.

But neither the SAFER SKIES Act nor Title III compel this conclusion. FCC equipment authorization would be more effective at avoiding unintended interference than the opaque and undefined process of populating the Authorized Systems List. The IFR notes that the List will identify specific systems that "have completed interagency evaluation"[24] that will address potential interference with non-Federal spectrum users, compatibility with Federal spectrum users, and potential interference with aviation safety systems.[25] But it is not clear how any such evaluation compares to the FCC's independent obligation to authorize equipment in light of its

[22] *Id.*

[23] 47 U.S.C. § 302a.

[24] IFR at 41506.

[25] *Id.*

statutory duties to protect radio communications from interference. Nor is it clear that stakeholders, including those whose lawful communications are at risk, will know what systems have been approved, their locations, their authorized spectrum bands, or their technical and operating parameters, much less how and why they were approved. The IFR says that the List will be posted on the FBI's Enforcement Enterprise Portal, but accounts in the portal are limited to personnel affiliated with the criminal justice system, intelligence community, and the armed forces.[26]

By contrast, the Commission has a longstanding, well-developed, and transparent equipment authorization process established with public input and fine-tuned over decades of use. That process also allows for public input on new types of equipment. The OET Knowledge Database ("KDB") provides guidance on how to comply with the equipment authorization rules, including guidance on how to file for authorizations of new types of devices and how to conduct compliance testing.[27] And OET solicits public input on KDB items by posting drafts on a website and accepting public comments on the KDB.[28]

### B. The Public Interest Analysis in the Equipment Authorization Waiver Order Does Not Satisfy the Standards for Grant of a Waiver.

The public interest analysis in the waiver is insufficient to meet the legal standards set forth in the relevant precedents. In *Northeast Cellular*,[29] the D.C. Circuit stated that waiver is

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[26] Equipment Authorization Waiver Order ¶ 3 & n.12.

[27] *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, First Report and Order, 32 FCC Rcd 8746, 8775 (2017); *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment et al.*, Notice of Proposed Rulemaking, 30 FCC Rcd 7725, 7729-30 (2015).

[28] *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields et al.*, Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 34 FCC Rcd 11687, 11724 & n.210 (2019).

[29] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

appropriate only if special circumstances warrant a deviation from the general rule, and the agency must explain why the deviation serves the public interest and articulate the nature of the special circumstances.

The Equipment Authorization Waiver Order says that "OET finds that special circumstances warrant a deviation from the general rules and the public interest is better served by waiving [the] rules in these circumstances," citing 47 C.F.R. § 1.3, *Northeast Cellular*, and *WAIT Radio*.[30] But what follows in the one-paragraph analysis does not define the special circumstances or justify adopting a broad waiver of critical protections in lieu of applying the equipment authorization rules. The Equipment Authorization Waiver Order says only that "on balance, a waiver . . . will promote public safety and is in the public interest."[31]

The FCC itself has been clear that in assessing waiver requests, it considers whether the particular facts make strict compliance inconsistent with the public interest.[32] The Order acknowledges that the rules being waived "are all designed to prevent unauthorized RF devices from causing harmful interference to authorized stations or otherwise harming public safety," citing Section 302 of the Communications Act.[33] Any waiver of those rules, then, must serve the goal of avoiding interference.

The Equipment Authorization Waiver Order says only that today there are no rules for authorizing jammers and then, rather than adopting rules or issuing a waiver with conditions that ensure its statutory interference protection obligations are addressed, it simply decides that no

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[30] Equipment Authorization Waiver Order ¶ 4 & n.29, citing *Northeast Cellular Tel. Co.*, 897 F.2d at 1166 and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[31] Equipment Authorization Waiver Order ¶ 9.

[32] *See Connect America Fund et al.*, Order and Order on Reconsideration, 31 FCC Rcd 8939, 8942 n.24 (2016).

[33] Equipment Authorization Waiver Order ¶ 9.

equipment authorization rules are needed.[34] The Equipment Authorization Waiver Order does not provide a reasoned explanation for its public interest finding. For the many reasons discussed here, having no equipment authorization rules is not the better public interest choice.

The equipment authorization rules have their foundation in Section 302 of the Act, which is focused on avoiding interference. The order acknowledges that the rules being waived "are all designed to prevent unauthorized RF devices from causing harmful interference to authorized stations or otherwise harming public safety," citing Section 302 of the Act. Any waiver of those rules, then, should serve the goal of avoiding interference.

The Equipment Authorization Waiver Order lists four factors as relevant to the decision: (1) equipment on the Authorized Systems List (and the IFR's Authorized Technologies List) will have been tested and approved by federal agencies; (2) it will be used only with federal training and certification; (3) it will be used only to mitigate credible threats; and (4) SLTT agencies will otherwise be bound by the SAFER SKIES Act.[35] As to the first factor, there is a reference in the IFR to "interagency coordination," but there is no mention of an FCC review specific to concerns about interference to non-federal uses. The opaque coordination process lacks the established guardrails that the FCC equipment authorization process would provide. There is no explanation of how the FCC will apply basic technical criteria such as power and signal strength levels in and around authorized service areas—factors relevant to any authorized spectrum user. Nor does it explain how the FCC will address complaints of harmful interference. As to the other three factors listed, they all go to the operation of devices, not to the evaluation of the devices' potential to cause unwanted harmful interference.

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[34] *Id.*

[35] *Id.*

CTIA asks that OET reconsider the Equipment Authorization Waiver Order to determine whether it is possible to engage in C-UAS jamming without blocking lawful communications, and to put strict controls into place to address the interference risks. Any introduction of C-UAS jamming by non-federal entities should begin with a carefully monitored pilot program to assess the risks and how to mitigate them, and use the results of that testing to craft regulations. SLTT agencies that propose to use jamming (or their equipment vendors) should be required first to demonstrate that they can do so without adversely affecting lawful communications.

### C. The IFR Does Not Provide For, or Support, This Equipment Authorization Waiver Order.

By waiving Section 2.805 of the FCC's rules, which limits operation of devices prior to authorization, the Equipment Authorization Waiver Order eliminates the FCC equipment authorization process and goes farther than DOJ and DHS contemplated in the IFR. The IFR states that the FCC will "issue waivers, as appropriate, to C-UAS equipment vendors and manufacturers to allow them to *import and sell* C-UAS mitigation equipment that employs radio frequency interdiction technologies or electronic counter measures to authorized SLTT law enforcement and correctional agencies."[36] But the IFR did not mention waiving the threshold requirement that vendors must obtain an equipment authorization. To the contrary, the IFR is clear that "system[s] must comply with any relevant regulations, policies, and guidance administered by the Federal Communications Commission[.]"[37]

Moreover, although the Equipment Authorization Waiver Order applies only to C-UAS systems that are included on the Authorized Systems List,[38] a reading of the IFR's overarching

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[36] IFR at 41491, 41509 (emphasis added).

[37] *Id.* at 41491, 41508.

[38] *See* Equipment Authorization Waiver Order ¶ 8.

approach to the List suggests that C-UAS jamming equipment should not be included on it. The IFR "clarifies that the [Authorized Systems] list requirement *applies only to technologies the operation of which requires the legal relief provided by the notwithstanding clause* of 6 U.S.C. 124n(a)(2)."[39] The "notwithstanding clause" does not, however, provide legal relief from any part of the Communications Act, including Section 333 or the Part 2 equipment authorization rules based on Section 302. As the IFR specifically recognizes, "the SAFER SKIES Act did not amend or waive the applicability of other Federal statutory provisions that may govern or proscribe SLTT agencies' otherwise authorized activity, including those in the Communications Act or other regulations governing access to spectrum."[40]

Based on the IFR's explanation, then, the correct conclusion is that, because the SAFER SKIES Act does not exempt Section 333 of the Communications Act, C-UAS jammers should not be incorporated into the Authorized Systems List, which only covers equipment once unlawful but now exempted under the "notwithstanding clause." That leaves a gap. If jammers are not eligible for inclusion on the Authorized Systems List in the first instance, there is no basis for the Equipment Authorization Waiver Order as written, and an alternate basis and structure for any waiver relief is necessary.

## III. THE ORDER GRANTING SPECIAL TEMPORARY AUTHORITY LEAVES LAWFUL COMMUNICATIONS, INCLUDING SAFETY-RELATED COMMUNICATIONS, VULNERABLE TO INTERFERENCE FROM JAMMERS.

### A. The STA Grant Does Not Address the Interference Risk Inherent in Jammer Operation.

Five Bureaus jointly issued an order granting blanket 180-day STAs nationwide for SLTT agencies to conduct C-UAS operations across unidentified spectrum bands using

[39] IFR at 41472 (emphasis added).

[40] *Id.* at 41468.

equipment on the Authorized Systems List. That grant includes a handful of conditions, none of which prohibit interference to lawful communications, specify that C-UAS operations must be secondary to licensed incumbents' operations, or require engagement with incumbent licensees whose operations may be affected by this C-UAS operation. The inherent risk of unintended interference from a C-UAS jammer is not acknowledged or addressed.

At a minimum, the Bureaus should clarify or reconsider the STA grant to make clear that (1) the STAs are granted on a secondary, non-interference basis; (2) the Part 5 "stop buzzer" rules apply to the SLTT agency operation of a C-UAS jammer;[41] and (3) an SLTT agency operating a C-UAS jammer in reliance on the STA must notify, coordinate with, or obtain the approval of licensed incumbents, depending on the degree of interference risk to those incumbents, before deploying a jammer. Both the public and incumbent licensees would benefit from such engagement, especially when public safety or commercial wireless service frequencies are involved.

### B. The Waiver of Unidentified Rules in 18 Entire Parts of the FCC's Rules Has Not Been and Cannot Be Justified.

The Special Temporary Authority Order, in addition to granting STAs, "waive[s] the rules contained in the following Commission rule parts, to the extent necessary, on our own motion: parts 1, 2, 15, 22, 24, 25, 27, 30, 73, 74, 78, 80, 87, 90, 95, 96, 97, and 101."[42] The Special Temporary Authority Order does not identify any specific rule being waived or explain what "to the extent necessary" means. Without specifying which individual rules are waived and why, the FCC cannot explain how special circumstances warrant deviation from the general rules, or why deviation from those rules better serves the public interest than adherence to them

[41] *See* 5 C.F.R. § 5.308.

[42] Special Temporary Authority Order ¶ 8 (footnote omitted).

would.[43] Part 1, for example, contains more than 100 distinct rules affecting wireless services. Nothing in the order explains which, if any, Part 1 rules are being waived or why. Courts have cautioned against granting waivers that would render the underlying rule meaningless.[44]

The Special Temporary Authority Order points to public safety considerations for the STA approach and waivers but does not weigh the contrary risk to public safety if C-UAS jammers interfere with operations on licensed spectrum bands, such as commercial wireless licensees completing 911 calls, or with the transmission of wireless emergency alerts. The waiver exacerbates the risks by eliminating existing protections.

Reducing the risk of harmful interference is a fundamental FCC obligation that the SAFER SKIES Act preserves.[45] The IFR recognized the importance of FCC regulations when it stated that the rules it adopted do not change the applicability of "rules administered by the FCC that relate to spectrum licensing, equipment authorization, and harmful interference to authorized services, among other things."[46] The Special Temporary Authority Order, though, simply removes those FCC rules.

And the rule parts being waived themselves contain important protections against interference. For instance, several of those rule parts establish that operations are secondary and must not cause interference to primary operations. Part 87, for example, regulates aviation frequencies, which require carefully controlled use to ensure flight safety. Further, the FCC's

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[43] *See Northeast Cellular*, 897 F.2d at 1166.

[44] *Tribune Co. v. FCC*, 133 F.3d 61, 65 (DC Cir. 1998) (if waiver were granted to requester that failed to show extraordinary circumstances, "the rule would be meaningless").

[45] *See* 47 U.S.C. § 302a; IFR at 41469.

[46] IFR at 41469.

rules authorizing wireless spectrum use contain detailed technical and operating rules—including transmitter power limits and out-of-band emission limits—that were adopted to ensure that operations do not cause interference in the same or adjacent bands.

CTIA asks that the FCC reconsider or clarify the broad and unsupported waiver by replacing it with targeted and specifically justified waivers of individually identified rules.

## IV. THE COUNTER-UAS OPERATIONS DECLARATORY RULING DOES NOT ALIGN WITH CONGRESS' DIRECTION AND, IN ANY EVENT, MISAPPLIES THE CONCEPT OF DERIVATIVE IMMUNITY TO SECTION 333.

### A. The FCC Cannot Do That Which Congress Did Not Prescribe.

As noted above, Congress did not exempt application of the Communications Act, including Section 333, from the implementation of the SAFER SKIES Act, whereas it expressly excluded other federal statutes in the "notwithstanding" provision. The C-UAS Operations Declaratory Ruling recognizes this:

> While subsection 124n(a)(2) expressly exempts SLLT agencies that take C-UAS actions under the authority of that provision from a number of laws that might otherwise render such actions unlawful, it does not provide any express exemption from the prohibition against willful or malicious interference with authorized communications under section 333 of the Act.[47]

But the declaratory ruling then exempts SLTTs from Section 333 based on a theory of derivative immunity that relies on SLTT agency compliance with the requirements of the SAFER SKIES Act.[48] The FCC cannot apply the SAFER SKIES Act framework to justify an exemption from Section 333 when Congress chose not to include Section 333 in the list of federal statutes to be exempted.

[47] C-UAS Operations Declaratory Ruling ¶ 4, citing 6 U.S.C. § 124n(a)(2).

[48] *Id.* ¶ 8.

### B. Derivative Immunity Theory Does Not Apply to the SAFER SKIES Act Framework.

Section 333 has long been understood to bar non-federal actors from engaging in jamming.[49] The C-UAS Operations Declaratory Ruling uses the concept of "derivative immunity" to expand the federal agencies' exemption to certain non-federal parties—(1) SLTT agencies operating under the SAFER SKIES Act framework, and (2) certain non-federal parties acting "on behalf of" a federal agency.[50]

The C-UAS Operations Declaratory Ruling expands application of the derivative immunity theory beyond what courts allow. The declaratory ruling quotes the Supreme Court's explanation of derivative immunity: "The Supreme Court's precedents establish that a non-federal party 'acting as an agent of the Government [can] be held liable for injurious conduct in only two circumstances: when he exceeded his authority or when that authority was not validly conferred.'"[51] That quote makes clear the flaw in the reasoning of the declaratory ruling. SLTT agencies authorized under the SAFER SKIES Act are not "acting as an agent of the Government," or even as federal government contractors. They are conducting C-UAS activities on their own behalf, in compliance with federal law. Derivative immunity thus cannot apply.

Both Supreme Court and Circuit Court decisions addressing derivative immunity have focused on agents or contractors *acting on behalf of the federal government*—that is, non-federal

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[49] *See, e.g.*, Jammer Enforcement, FCC (Apr. 2020), https://www.fcc.gov/general/jammer-enforcement ("The use of a phone jammer, GPS blocker, or other signal jamming device designed to intentionally block, jam, or interfere with authorized radio communications is a violation of federal law. There are no exemptions for use within a business, classroom, residence, or vehicle. Local law enforcement agencies do not have independent authority to use jamming equipment; in certain limited exceptions use by Federal law enforcement agencies is authorized in accordance with applicable statutes.").

[50] C-UAS Operations Declaratory Ruling ¶¶ 14-18.

[51] *Id.* ¶ 15, quoting *Geo Group v. Menocal*, 146 S. Ct. 774, 784 (2026).

actors carrying out the instructions of the federal government, *for* the federal government.[52] Nothing in the SAFER SKIES Act, though, suggests that SLTT agencies operating C-UAS under that statute's authority are acting on behalf of the federal government, or as federal agents or contractors.

To the contrary, the IFR recognizes the independent nature of SLTT agency action, stating that "Congress passed the SAFER SKIES Act to provide a framework for SLTT agencies *to exercise C-UAS authority independently of Federal task forces and deputization*, which limit SLTT agencies to C-UAS activities as part of Federal actions."[53] The SAFER SKIES Act's obligation for SLTTs to report to federal agencies only after they conduct mitigation operations bolsters this understanding that the SLTT agencies are acting at their own discretion, not for or on behalf of federal authorities. Notwithstanding that SLTT agencies are operating within a federal legal framework, such operations under the SAFER SKIES Act are not performed on behalf of the federal government, and thus they cannot have derivative immunity via the federal government's exemption from Section 333.

As to the other non-federal parties that the Declaratory Ruling seeks to immunize, derivative immunity is fact-specific and different federal circuit courts have approached it differently, with some requiring an agency relationship. The Eleventh Circuit, for instance, has said that an entity claiming immunity must "at a bare minimum" have been a common law agent

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[52] *See, e.g.*, *GEO Group, Inc. v. Menocal*, 146 S. Ct. 774 (2026) (Geo Group was operator of a detention facility under a contract with U.S. Immigration and Customs Enforcement); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016) (addressing "whether Campbell's status as a federal contractor renders it immune from suit"); *Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18 (1940) (addressing the liability of agents or contractors); *U.S. Off. of Personnel Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42 (DC Cir. 2019) (addressing liability of Office of Personnel Management contractor).

[53] IFR at 41476 (emphasis added).

of the government, and noted that derivative immunity applies because "[t]he action of the agent is the act of the government."[54]

CTIA asks that WTB reconsider the Declaratory Ruling to better conform to the proper application of the derivative immunity doctrine. Only entities acting at a bare minimum as agents of the federal government could be properly eligible for derivative immunity.

## V. THE EXPERIMENTAL TESTING DECLARATORY RULING DOES NOT COMPORT WITH CIRCUIT COURT PRECEDENT.

Section 333 of the Communications Act prohibits non-federal users from interfering with licensed or authorized stations. Relying on the definition of "interference" in the FCC's rules at 47 C.F.R. § 2.1, the Experimental Testing Declaratory Ruling "clarifies" that C-UAS jammer testing by non-federal entities is permissible when a party with an FCC authorization to test C-UAS signal jamming intentionally disrupts communications between ground and airborne UAS stations that the testing party has authorization to control.

Section 2.1 defines "interference" as "[t]he effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy." The Experimental Testing Declaratory Ruling reasons that where all relevant stations are under one licensee's control, the energy that the licensee transmits to intentionally disrupt communications is not "unwanted" and accordingly does not constitute interference under Section 333.[55] In other words, the ruling interprets Section 333 as permitting "self-interference."

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[54] *McMahon v. Presidential Airways, Inc*., 502 F.3d 1331, 1343 (11th Cir. 2007) (citing *Yearsley*, 309 U.S. at 22).

[55] Experimental Testing Declaratory Ruling ¶¶ 5-6.

A Fourth Circuit decision, however, directly contradicts that conclusion that self-interference is permissible. In *Johnson v. American Towers, LLC*, Johnson argued that, notwithstanding Section 333, wireless providers could lawfully jam their own signals to block calls originating from contraband devices in a correctional facility. When a district court disagreed, Johnson appealed. The Fourth Circuit held that:

> A more persuasive reading of this section of the Communications Act is to read the entire sentence together: no person shall interfere with any radio communications, including his or her own. The use of the word "any" includes one's own communications. If the statute intended to exclude self-interference, the statute would state "any other radio communications" rather than "any radio communications." [56]

The Experimental Testing Declaratory Ruling does not address the Fourth Circuit precedent or the statutory interpretation issue the court highlighted—Section 333's use of the term "any." In addition, this ruling on delegated authority and its self-interference theory cites to a Commission-level interpretation of "interference" that conflicts with this new interpretation. Specifically, the Experimental Testing Declaratory Ruling acknowledges that "[t]he FCC has described radio signal jamming as the purposeful disruption of electronic devices, equipment, or systems via RF interference."[57] That Commission-level statement about what constitutes jamming in the context of Section 333 is absolute (and more recent than rule 2.1), and the declaratory ruling offers no basis for any action on delegated authority that deviates from it.

The apparent contradictions between the Experimental Testing Declaratory Ruling, the decision in *Johnson*, and past FCC statements call into question the authority to have issued the

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[56] *Johnson v. American Towers, LLC*, 781 F.3d 693, 708 (4th Cir., 2015).

[57] Experimental Testing Declaratory Ruling ¶ 5 (citing *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 6603, 6614 (2013)).

ruling on delegated authority.[58] CTIA asks that the Bureaus reconsider the Experimental Testing Declaratory Ruling and reassess their assertion of delegated authority so as to reach a conclusion that does not conflict with judicial precedent and Commission interpretations.

## VI. CONCLUSION.

For the reasons set forth above, CTIA asks that the FCC reconsider and/or clarify the Experimental Testing Declaratory Ruling by reconsidering and reassessing the assertion of delegated authority so as to reach a conclusion that does not conflict with judicial or FCC precedent.

Respectfully submitted,

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[58] *See* 47 C.F.R. § 0.331(a)(2).