

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket No. 00–230; FCC 03–113]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we adopt final rules that remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights. First, we promote the wider use of spectrum leasing arrangements by facilitating the ability of licensees in our Wireless Radio Services that hold “exclusive” authority to lease some or all of their spectrum usage rights to third parties for any amount of spectrum and in any geographic area encompassed by the license, for any period of time within the term of the license. Second, we adopt streamlined approval procedures for license assignments and transfers of control in these Wireless Radio Services.

DATES: Effective January 26, 2004, except for §§ 1.913(a), 1.913(a)(3), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e), which contain information collection requirements that are not effective until approved by the Office of Management and Budget (OMB), and 1.948(j), which is effective on April 5, 2004. The agency will publish a document in the **Federal Register** announcing the effective date of the rules that require information collection.

FOR FURTHER INFORMATION CONTACT: Paul Murray, Wireless Telecommunications Bureau, at (202) 418–7240, or via the Internet at Paul.Murray@fcc.gov; for additional information concerning the information collections contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at Judith.B-Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order portion (*Report and Order*) of the Commission’s Report and Order and Further Notice of Proposed Rulemaking, FCC 03–113, in WT Docket No. 00–230, adopted on May 15, 2003, and released on October 6, 2003. Contemporaneous with this document, the Commission issues a Further Notice of Proposed Rulemaking (published elsewhere in this publication). The full text of this document is available for inspection

and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC’s copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at Brian.Millin@fcc.gov.

Paperwork Reduction Act

This R&O contains a new information collection as described in Section D of the Final Regulatory Flexibility Analysis in Appendix C infra. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection(s) contained in this proceeding. Public and agency comments are due January 26, 2004. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets.

Form No.: FCC Form 603.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents/Annually: 71,262.

Estimated Time per Response: 9 hrs.

Total Annual Burden: 641,311 hrs.

Total Annual Costs: \$117,088,018.33

Needs and Uses: The required notifications and applications will provide the Commission with useful information about spectrum usage and helps to ensure that licensees and

lessees are complying with Commission interference and non-interference related policies and rules. Similar information and verification requirements have been used in the past for licensees operating under authorizations, and such requirements will serve to minimize interference, verify that lessees are legally and technically qualified to hold licenses, and ensure compliance with Commission rules.

Synopsis of the Report and Order

I. Introduction

A. Wireless Radio Services

1. In the *Report and Order*, we take several actions to remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights in the Wireless Radio Services. Specifically, we take several steps to facilitate and streamline the ability of spectrum users to gain access to licensed spectrum by entering into spectrum leasing arrangements that are suited to the parties’ respective needs. As a threshold matter, we revise the Commission’s interpretation of the *de facto* control standard relating to section 310(d) of the Communications Act, 47 U.S.C. 310(d), in the context of spectrum leasing, replacing the standard that has been in place since 1963 under the *Intermountain Microwave* decision, 12 FCC 2d 559 (1963), with a refined standard that better accords with our contemporary market-oriented spectrum policies, fast-changing consumer demands, and technological advances. The *Intermountain Microwave* standard, which focuses its *de facto* control analysis on whether licensees exercise close working control over all of the facilities using licensed spectrum, is not required by the Communications Act. Moreover, this standard impedes innovative and efficient leasing arrangements with third party spectrum users that do not require Commission approval under the statute. The updated standard we adopt for leasing refines the *de facto* control analysis, consistent with statutory requirements, by focusing instead on whether licensees continue to exercise effective working control over any spectrum they lease to others.

2. We implement two different options for spectrum leasing. One option enables licensees and “spectrum lessees” to enter into leasing arrangements, without the need for Commission approval, so long as the licensee retains *de jure* control of the license and *de facto* control of the leased spectrum under the newly refined standard. The other option permits parties to enter into