

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

MEMORANDUM OPINION AND ORDER

Adopted: January 30, 2004

Released: January 30, 2004

By the Chief, Wireless Telecommunications Bureau:

1. On October 6, 2003, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ A summary of the *Secondary Markets Report and Order* was published in the Federal Register on November 25, 2003.² The effective date of the Commission's new secondary market rules, except for sections 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules, is February 2, 2004.³

2. In order to fully implement all aspects of the *Secondary Markets Report and Order*, the Commission must receive approval from the Office of Management and Budget (OMB) for the revised FCC Form 603 (Form 603) required under the newly adopted rules and must implement extensive changes to its Universal Licensing System (ULS). To permit parties to submit the necessary notifications (for spectrum manager leasing) and applications (for long-term and short-term *de facto* transfer leasing) under the rules when they become effective on February 2, 2004, Wireless Telecommunications Bureau (Bureau) staff have developed a FCC Form 603-T (FCC Wireless Telecommunications Bureau Application or Notification for Spectrum Leasing Agreement) (Form 603-T) to be used on an interim basis for the filing of the required spectrum leasing notifications and applications.⁴ In addition, Bureau

¹ In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-113 (rel. Oct. 6, 2003) (*Secondary Markets Report and Order*); *Erratum*, DA 03-3780 (rel. Nov. 24, 2003).

² See 68 Fed. Reg. 66252 (Nov. 25, 2003).

³ See "Effective Date of Certain Rules Adopted in the Secondary Markets Proceeding, WT Dkt. No. 00-230, Delayed Under February 2, 2004," *Public Notice*, DA 04-75 (rel. Jan. 15, 2004). Sections 1.913(a), 1.913(a)(3), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules contain information collections requirements that are not effective until approved by the Office of Management and Budget, and section 1.948(j) of the Commission's rules is effective on April 5, 2004.

⁴ The Form 603-T has been submitted to OMB for emergency approval. The interim filing process will be available promptly upon receipt of OMB's approval of the interim form. The Bureau will advise the public when the interim filing process is available.

staff have designed a process to facilitate electronic filing of the notifications and applications through ULS, subject to some constraints, until the necessary software changes can be implemented in ULS. A public notice will be released providing guidance to the public with regard to the steps necessary to file spectrum leasing notifications and applications during this interim processing period.

3. The *Secondary Markets Report and Order* grants delegated authority to the Bureau to implement the Commission's policies facilitating spectrum leasing.⁵ Pursuant to that grant of authority, the Bureau in this order waives a number of rule sections in order to permit the implementation of the interim filing process.

4. *Use of Form 603-T in lieu of Form 603.* A number of the newly adopted rule sections prescribe the filing of spectrum leasing notifications and applications on Form 603. As indicated above, the revised Form 603 will require OMB approval before it may be implemented. Accordingly, in order to permit parties to use the Form 603-T on an interim basis, we waive the requirements of the following rule sections:

- Section 1.913(a)(3)'s requirement that Form 603 be used by licensees and spectrum lessees to notify the Commission regarding spectrum manager leasing arrangements and to apply for Commission consent to *de facto* transfer leasing arrangements pursuant to the spectrum leasing rules set forth in subpart X of Part 1 of the Commission's rules.
- Section 1.9003's requirement, in the definition of FCC Form 603, that Form 603 be used by licensees and spectrum lessees that enter into spectrum leasing arrangements pursuant to subpart X of Part 1, that parties submit the form electronically when entering into spectrum leasing arrangements, and that licensees governed by the provisions of section 1.913(d) of the Commission's rules may file the notification or application either electronically or manually.
- Section 1.9020(e)(4)'s requirement that a spectrum manager leasing notification contain all information requested on Form 603.
- Section 1.9030(e)'s requirement that parties entering into a long-term *de facto* transfer leasing arrangement must file an application on Form 603 (whether electronically or manually) to obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum.
- Section 1.9030(e)(4)'s requirement that a long-term *de facto* transfer leasing application contain all information requested on Form 603.
- Section 1.9035(e)'s requirement that parties entering into a short-term *de facto* transfer leasing arrangement must file an application on Form 603 (whether electronically or manually) to obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum.
- Section 1.9035(e)(3)'s requirement that a short-term *de facto* transfer leasing application contain all information requested on Form 603.

In lieu of using Form 603 during the period of time in which the Commission deploys interim procedures for the acceptance and processing of spectrum leasing notifications and applications, parties should use Form 603-T, once OMB approves the use of that interim form.

⁵ *Secondary Markets Report and Order*, ¶ 339.

5. *Inability of de facto transfer lessees or sublessees to make direct filings subsequent to Commission consent to the de facto transfer lease application.* The *Secondary Markets Report and Order* and associated rules provide that, once the Commission has consented to a *de facto* transfer leasing application, the spectrum lessee (or spectrum sublessee) will be responsible for making any necessary filings with the Commission in connection with its operations in the leased spectrum.⁶ During the period of time in which the Commission is deploying interim processes for the filing and review of spectrum leasing notifications and applications, ULS will not be able – for technical reasons – to accommodate *de facto* transfer spectrum lessees or sublessees making such filings on their own behalf. Rather, the licensee from whom the spectrum lessee is directly leasing spectrum or the spectrum sublessee is indirectly leasing spectrum will need to make any necessary filings. Accordingly, during the interim process, the Bureau waives the applicability of sections 1.9030(c)(3), 1.9030(c)(4), and 1.9035(c) of the Commission’s rules to the extent these provisions require that a *de facto* transfer spectrum lessee be responsible for interacting with the Commission regarding the leased spectrum and for making all related filings.

6. *Inability to file amendments and administrative updates electronically.* Under the interim process developed by the Bureau staff, licensees and spectrum lessees (or sublessees) that have submitted spectrum leasing notifications or applications will not be able, at least initially, to file by electronic means through ULS any amendments to such pending notifications or applications. Similarly, a spectrum lessee or spectrum sublessee will not be able to file an administrative update by electronic means through ULS, given the nature of the interim electronic filing process. Rather, amendments to notifications and applications and administrative updates regarding spectrum lessees and spectrum sublessees will need to be submitted by email, as directed in the separate public notice that will provide guidance to the public on the interim filing process. Accordingly, we waive the requirements of section 1.9060 of the Commission’s rules, which cross-references sections 1.927 and 1.929 of the Commission’s rules, to permit parties to submit amendments to spectrum leasing notifications and applications and administrative updates concerning lessees or sublessees via an email filing box. We currently expect that ULS will be capable of accommodating the electronic filing of amendments in the near future, in which case we will terminate this waiver to the extent appropriate. We will provide notice to the public of the termination of the waiver.

7. Granting waiver of the Commission rules as set forth above will permit the Bureau to implement interim acceptance and processing of spectrum leasing notifications and applications on a timely basis while the Commission obtains OMB approval for the revised Form 603 and completes software changes to ULS. We believe that instituting an interim process upon the effective date of the new rules serves the public interest in facilitating the implementation of spectrum leasing pursuant to the Commission’s *Secondary Markets Report and Order* at the earliest possible date. The Bureau will release a public notice once OMB approval has been received for the revised Form 603 and the ULS updates have been completed. This public notice will advise the public on what date they should begin to use the new Form 603 and the date on which the interim process and the associated waivers of rules will be terminated.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, and paragraph 339 of the *Secondary Markets Report and Order*, the rules identified above are waived to the extent indicated and until such time as such waiver is terminated.

⁶ See *Secondary Markets Report and Order*, ¶¶ 137, 166; §§ 1.9030(c)(3), 1.9030(c)(4), and 1.9035(c) (new sections of the Commission’s rules that pertain to spectrum leasing arrangements).

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, and paragraph 339 of the *Secondary Markets Report and Order*.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta
Chief
Wireless Telecommunications Bureau