

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

In the Matter of)
)
Commission Rule 1.9020, Spectrum Manager)
Leasing Arrangements)

ORDER

Adopted: May 3, 2017

Released: May 3, 2017

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Bureau corrects and republishes Section 1.9020(e)¹ of the Commission’s rules in its entirety, in order to remedy an error in an earlier publication of the rule in the Code of Federal Regulations (CFR).

II. BACKGROUND AND DISCUSSION

2. Section 1.9020 of the Commission’s rules addresses spectrum manager leasing arrangements.² In revising the rule in the 2015 *Competitive Bidding Rules R&O*,³ the Commission used amending language that resulted in the inadvertent deletion of subparagraphs (e)(1) and (e)(2) when the revised rule was published in the Federal Register. As there was no discussion in the *Competitive Bidding Rules R&O* of eliminating those subparagraphs, it is apparent that the deletion was not intentional. Rather, the Commission’s clear intent was only to revise the introductory text of paragraph (e).⁴

3. On March 24, 2017, unaware of the earlier inadvertent deletion, the Commission released the *Contraband Wireless Devices Report and Order*,⁵ in which it adopted revisions to certain of the deleted subparagraphs of Section 1.9020(e).⁶ In order for the Commission to publish those rule changes in the *Federal Register* and make the necessary amendments to the CFR, we must first correct the earlier

¹ 47 CFR § 1.9020(e).

² *Id.*

³ *Updating Part 1 Competitive Bidding Rules et al.*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Competitive Bidding Rules R&O*).

⁴ The introductory text was revised again in *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011 (2016).

⁵ *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-25, 2017 WL 1135543 (2017) (*Contraband Wireless Devices Report and Order*).

⁶ See *Contraband Wireless Devices Report and Order*, Appx. A (revising the introductory language of paragraph (e)(2), redesignating paragraphs (e)(2)(ii) and (e)(2)(iii) as (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii)).

error and replace the inadvertently deleted subparagraphs.

4. Accordingly, by this Order, the Bureau restores the inadvertently deleted portions of Section 1.9020(e) of the Commission's rules. This rule correction, which serves to effectuate the Commission's intent, reinstates the inadvertently deleted subparagraphs of Section 1.9020(e) and republishes Section 1.9020(e) in its entirety for clarity. The corrected version of Section 1.9020(e) is attached to this Order as APPENDIX A.

5. The Bureau finds it appropriate to forego a notice-and-comment period prior to this Order taking effect, given the nature of this rule correction and the impact of the current error within the Commission's rules. The Administrative Procedure Act (APA) provides that notice procedures are not required where "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."⁷ We find that using the procedures of a notice-and-comment rulemaking to reinstate the inadvertently deleted subparagraphs of Section 1.9020(e) would be contrary to the public interest because it would delay the implementation of certain significant public safety initiatives adopted by the Commission and would be unlikely to effectuate the public interest benefits usually associated with the conduct of a notice-and-comment proceeding.

6. Requiring notice and comment prior to the rule correction becoming effective would delay the implementation of certain rule amendments adopted in the *Contraband Wireless Devices Report and Order*, which are intended to expedite processing of spectrum lease applications or notifications for certain systems used to combat the use of contraband wireless devices in correctional facilities. We find that it would be contrary to the public interest to delay the significant public safety impact of these systems in order to provide notice and comment for this rule correction. We reach this conclusion specifically in light of the fact that the usual benefits of notice and comment appear to be absent here, given the Commission demonstrably did not intend to delete the longstanding subparagraphs of Section 1.9020(e)⁸ and, in the intervening period following the inadvertent deletion, the public appears to have been operating under the assumption that the process contained in the deleted subparagraphs remained intact. Indeed, since the *Competitive Bidding Rules R&O*, which resulted in the deletion, the Bureau has continued to receive the notifications filed by licensees pursuant to the procedures and standards set forth in Section 1.9020(e), including its inadvertently deleted subparagraphs. Because a notice-and-comment procedure would be contrary to the public interest, the Bureau finds good cause to forego a notice-and-comment rulemaking for the purposes of this correction to Section 1.9020(e).

7. The APA requires publication of a substantive rule at least 30 days before its effective date "except as otherwise provided by the agency for good cause found and published with the rule."⁹ For the same reasons that we forego notice-and-comment procedures, we find good cause to make this correction to Section 1.9020(e) effective immediately to remedy the error in the rule in the CFR.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303, and Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R §§ 0.131 and 0.331, this *Order* IS ADOPTED.

⁷ 5 U.S.C. § 553(b)(B).

⁸ Nothing in the *Competitive Bidding Rules R&O* mentions deleting the relevant subsections.

⁹ 5 U.S.C. § 553(d)(3).

9. IT IS FURTHER ORDERED that this *Order* is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Neşe Guendelsberger
Acting Chief
Wireless Telecommunications Bureau

APPENDIX A

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(e) *Notifications regarding spectrum manager leasing arrangements.* A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations under the lease. Unless the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules and continues to be subject to unjust enrichment requirements and/or transfer restrictions (*see* §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter) or restrictions in § 1.9046 and § 96.32 of this chapter, the spectrum manager lease notification will be processed pursuant to either the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) may file the notification either electronically or manually. If the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules, the spectrum manager lease will require Commission acceptance of the spectrum manager lease notification prior to the commencement of operations under the lease.

(1) *General notification procedures.* Notifications of spectrum manager leasing arrangements will be processed pursuant to the general notification procedures set forth in this paragraph unless they are submitted and qualify for the immediate processing procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted under these general notification procedures, the notification must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed. No application fees are required for the filing of a spectrum manager leasing notification.

(ii) The licensee must submit such notification at least 21 days in advance of commencing operations unless the arrangement is for a term of one year or less, in which case the licensee must provide notification to the Commission at least ten (10) days in advance of operation. If the licensee and spectrum lessee thereafter seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(iii) A notification filed pursuant to these general notification procedures will be placed on an informational public notice on a weekly basis (*see* § 1.933(a)) once accepted, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section qualify for the immediate processing procedures.

(i) To qualify for these immediate processing procedures, the notification must be sufficiently complete and contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service), or in the ATC of a Mobile Satellite Service, in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) Provided that the notification establishes that the proposed spectrum manager leasing arrangement meets all of the requisite elements to qualify for these immediate processing procedures, ULS will reflect that the notification has been accepted. If a qualifying notification is filed electronically, the acceptance will be reflected in ULS on the next business day after filing of the notification; if filed manually, the acceptance will be reflected in ULS on the next business day after the necessary data from the manually filed notification is entered into ULS. Once the notification has been accepted, as reflected in ULS, the spectrum lessee may commence operations under the spectrum leasing arrangement, consistent with the term of the arrangement.

(iii) A notification filed pursuant to these immediate processing procedures will be placed on an informational public notice on a weekly basis (*see* § 1.933(a)) once accepted, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

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