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

In the Matter of	)	
	)	
Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules	)	ET Docket No. 10-236
	)	
2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)	)	ET Docket No. 06-155

ORDER ON RECONSIDERATION

Adopted: May 28, 2013 **Released: May 29, 2013**

By the Commission:

1. In this Order, the Commission modifies on its own motion the rules adopted in the *Report and Order* (*R&O*) in this proceeding regarding transfer and assignment of experimental licenses issued under Part 5 of its rules.[1]

2. In the *Notice of Proposed Rulemaking* (*NPRM*) in this proceeding, the Commission, *inter alia*, proposed to establish research program, medical program, and innovation zone program Experimental Radio Service (ERS) licenses to complement the existing conventional experimental license.[2] The Commission also proposed to amend the language of Section 5.79 of the Commission's Rules regarding ERS license transfers. The proposed language modified the title of the rule to specifically refer to conventional experimental licenses and preserved the core component of the rule by continuing to prohibit the transfer of such licenses, unless the Commission approves in writing such a transfer. The proposed rule did not address transfers of the proposed program licenses.[3] No comments were received on this proposal.

3. In the *R&O*, the Commission authorized three new types of ERS licenses, but modified the proposal set forth in the *NPRM* by classifying those licenses as program, medical testing, and

[1] *See* Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10-236; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET), ET Docket No. 06-155; *Report and Order*, 28 FCC Rcd 758 (2013); *Erratum*, 28 FCC Rcd 3096 (2013).

[2] *See* Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10-236; 2006 Biennial Review of Telecommunications Regulations – Part 2, Administered by the Office of Engineering and Technology (OET), ET Docket 06-155; *Notice of Proposed Rulemaking,* 25 FCC Rcd 16544 at 16548-49 (2010), para. 12; *Erratum*, 26 FCC Rcd 3828 (2011).

[3] *See NPRM,* 25 FCC Rcd at 16597, § 5.79.

compliance testing.[4] The Commission also adopted the body of proposed Section 5.79, but included the three new types of ERS licenses – in addition to conventional licenses – in the section heading.[5] Thus, the *R&O* implies that, under amended Section 5.79, the transfer of any type of ERS license is permitted with the written approval of the Commission.

4. Upon reflection, we find it in the public interest to modify Section 5.79 to specifically prohibit the transfer of program, medical testing, and compliance testing experimental radio licenses, while continuing to permit conventional experimental authorizations to be transferred with the written approval of the Commission. As an initial matter, we observe that the text of the *R&O* stated that the Commission would prohibit the transfer of compliance testing licenses.[6] Thus, in this respect, there is an inconsistency between the adopted rule and this prohibition, which, for the reasons set out below, should be resolved by clearly prohibiting such transfers.

5. We conclude that, based on the nature of the program, medical testing, and compliance licenses, transfer of these licenses should not be permitted. These new ERS licenses, which afford some important advantages relative to the conventional ERS license – including significantly more flexibility to undertake a broad range of experiments under a single authorization[7] – also impose additional requirements on applicants of these new licenses, requirements that reflect that these licenses are more tailored to the unique characteristics of the particular licensed entity than is the case with conventional experimental licenses. For example, unlike the eligibility requirements for conventional licenses, which require only that licensees be "qualified to conduct the types of operations permitted in § 5.3 of this part . . ,"[8] these new ERS licenses are limited to specialized organizations and institutions. Specifically, program experimental licenses are available only to "colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions;"[9] medical testing licenses are available only to "hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring;"[10] and compliance testing licenses are available only to "laboratories recognized by the FCC under Subpart J of this chapter to perform (i) product testing of radio frequency equipment, and (ii) testing of radio frequency equipment in an Open Area Test Site."[11] Program and medical testing licensees must also meet additional requirements concerning responsible party, public notification, and safety of the public to ensure that harmful interference to other licensed radio services is not caused by program and medical testing experiments.[12] These factors necessitate a greater level of review of the specific attributes of the applicant and the details of the experimentation plans than we undertake when evaluating applications pertaining to a conventional license, and much of this additional information is not normally provided on a transfer application. Thus, it would be difficult

[4] *See R&O,* 28 FCC Rcd at 759, para. 1.

[5] *Id*. at 840, § 5.79.

[6] *Id*. at 796, para. 103.

[7] *Id*. at 761, para. 8.

[8] *Id*. at 832, § 5.51.

[9] *Id*. at 832, § 5.54(c).

[10] *Id*. at 832, § 5.54(d).

[11] *Id*. at 832-33, § 5.54(e).

[12] *Id*. at 850-53, §§ 5.307, 5.309, 5.311, and 5.406.

for the Commission to ascertain if the transferee has the necessary knowledge, expertise, and internal controls required by the rules without introducing significant complexity to our existing transfer process (comparable to that required for initial licensing).

6. In addition, unlike a conventional ERS license, which conveys a narrowly defined right to operate a single experiment in a specific frequency band at specific locations, program and medical testing licenses will convey broad rights to operate multiple experiments in a variety of frequency bands at a single location under the licensee's control. It is only after the license grant that the exact characteristics of the experiment are revealed via a publicly accessible web-based registration system. In addition, the rules require a minimum period of 10 days between the registration and the commencement of the experiment for public comment. Because a program and medical testing license authorizes ongoing experimentation only at specified locations that the licensee controls, a transfer of these licenses to another party who would likely be at another location is problematic and could deprive interested parties who are concerned about potential interference of the ability to raise such concerns prior to experimentation. Moreover, compliance testing licenses convey additional flexibility beyond that provided for program and medical testing licenses. Specifically, we note that compliance testing licenses may operate on any frequency (including in restricted bands) and are not subject to the web-based prior notification requirement. Therefore, we do not find that there would be the same kind of significant public benefit in allowing any of these new licenses to be transferred as there is under some circumstances for conventional experimental licensees. Even with respect to conventional licenses, we find it prudent to permit license transfers only in certain circumstances, such as where the experimentation cannot be fruitfully continued by the licensee; accordingly, we do not permit such transfers without written Commission approval.

7. Finally, we note that there are practical options to ensure the continuation of an experiment being conducted under a program, medical testing, or compliance testing license in the event of a change in ownership or control of the licensee. First, an experimenter may obtain a conventional license for the particular experiment. Or, with advance planning, the new owner, assuming it is duly qualified, may apply for and obtain one of the new licenses and complete the advance registration requirement prior to taking over the experimentation (either before or after the change in ownership or control of the licensee). And, as indicated above, if we were to allow assignments or transfers of these new forms of experimental license, the detail of the submissions and level of scrutiny that would be required – due to the nature of the operations conducted under such licenses – would not differ significantly from that which is required for obtaining an initial license. Thus, we believe that modifying the rule to explicitly prohibit transfer of program, medical testing, and compliance testing licenses will result in no harm to any qualified license applicant or licensee.

8. *Regulatory Flexibility Certification*. The Regulatory Flexibility Act (RFA)[13] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[14] We hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities for the following two reasons: (1) The action maintains the status quo for conventional experimental licensees, and (2) We find that prohibiting the assignment or transfer of program, medical testing, and compliance testing licenses will have, at most, a *de minimis* effect on small entities, in light of the comparable alternatives available, as described above in paragraph 7. Indeed, no party provided any comments indicating either that a bar on such transactions would have any

[13] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[14] *See* 5 U.S.C. § 605(b).

adverse effects or that permitting such transfers would provide any benefits. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[15] In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.[16]

9. *Paperwork Reduction Act Analysis*. This document modifies an information collection requirement adopted in the *R&O* and is therefore subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

10. *Congressional Review Act*. The Commission will send a copy of this Order on Reconsideration in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

11. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, and 303, and sections 1.1 and 1.108 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.108, this Order on Reconsideration IS ADOPTED.

12. IT IS FURTHER ORDERED that Section 5.79 of the Commission's Rules, 47 C.F.R. Section 5.79, IS AMENDED as set forth in the Appendix. That rule contains a modified information collection requirement that requires approval by the Office of Management and Budget under the Paperwork Reduction Act, and WILL BECOME EFFECTIVE after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[15] *Id.*

[16] *Id.*

APPENDIX

Rules

§ 5.79 Transfer and assignment of station authorization for conventional, program, medical testing, and compliance testing experimental radio licenses.

(a) A station authorization for a conventional experimental radio license, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission decides that such a transfer is in the public interest and gives its consent in writing.

(b) A station authorization for a program, medical testing, or compliance testing experimental radio license, the frequencies authorized to be used by the grantees of such authorizations, and the rights therein granted by such authorizations shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of.