

SUPPORTING STATEMENT

A. Justification:

1. FCC Form 608 is a multi purpose form. It is used to provide notification or request approval for any spectrum leasing arrangement ('Leases') entered into between an existing licensee ('Licensee') in certain Wireless and/or Public Safety Radio Services and a spectrum lessee ('Lessee'). This form also is required to notify or request approval for any spectrum subleasing arrangement ('Sublease'). The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease.

In this latest revision, pursuant to Second Report and Order Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, FCC 06-52, adopted April 25, 2006 and released April 25, 2006, FCC Form 608 is being revised to accommodate:

- **To include Gross Revenue for Attributable Material Relationship (AMR Entity)*; and**
- **Clarify existing questions/instructions of the general public as noted in the Communications Act of 1934, as amended. This includes changes in Commission phone numbers, email addresses, etc.****

***The Commission has revised FCC Form 608 to include a new page 5 in Schedule A. The increase in the number of respondents for this collection is due the submission of the AMR Entities. Because the Commission is including this new set of respondents, we are reporting a program change increase in the hourly burden and annual cost burden.**

****The Commission is now including the Public Safety and Homeland Security Bureau in the title of FCC Form 608 and throughout the collection where needed. There are no additional respondents or burdens due to this change.**

Background: On October 6, 2003, the Commission released a Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM) in the Matter of Promoting Efficient Use of Spectrum through the Elimination of Barriers to the Development of Secondary Markets in WT Docket No. 00-230. The R&O sets out regulations and procedures that remove unnecessary barriers that inhibit the development of secondary markets in spectrum usage rights. Specifically, the R&O promotes the wider use of "spectrum leasing" by facilitating the ability of licensees in the Wireless Radio Services that hold "exclusive" authority to lease some or all of their spectrum usage rights to third parties for any amount spectrum and in any geographic area encompassed by the license, for any period of time within the term of the license. In essence, the Commission is replacing the existing standard for assessing *de facto* control with an updated standard applicable for spectrum leasing that better accommodates recent evolutionary developments in the Commission's spectrum policies, technological advances, and

marketplace trends. Further, the Commission provides parties to spectrum lease transactions two different options, based on the scope of the rights and responsibilities to be assumed by the lessee when leasing spectrum: “spectrum manager” leasing¹ and “*de facto*” transfer leasing.² Lastly, the Commission adopts streamlined approval procedures for license assignments and transfers of control in these Wireless Radio Services.

The Commission revised this collection because on September 2, 2004, the Commission released a Second Report and Order (R&O) and Second Further Notice of Proposed Rulemaking (FNPRM) in the Matter of Promoting Efficient Use of Spectrum through the Elimination of Barriers to the Development of Secondary Markets in WT Docket No. 00-230, FCC 04-167. The R&O set forth regulations and procedures that removed unnecessary barriers that inhibited the development of secondary markets in spectrum usage rights. Specifically, the R&O promoted the wider use of “spectrum leasing” by facilitating the ability of licensees in the Wireless Radio Services that held “exclusive” authority to lease some or all of their spectrum usage rights to third parties for any amount spectrum and in any geographic area encompassed by the license, for any period of time within the terms of the license. In essence, the Commission has replaced the existing standard for assessing *de facto* control with an updated standard applicable for spectrum leasing that better accommodated past evolutionary developments in the Commission’s spectrum policies, technological advances, and marketplace trends. Further, the Commission provided parties to spectrum lease transactions two different options, based on the scope of the rights and responsibilities to be assumed by the lessee when leasing spectrum: “spectrum manager” leasing³ and “*de facto*” transfer leasing.⁴ The Commission adopted streamlined approval procedures for license assignments and transfers of control in these Wireless Radio Services. In the interest of administrative efficiency, we now determined to create a separate filing form, FCC Form 608 (formerly known as FCC Form 603-T), that pertains specifically to spectrum leasing arrangements, and our rules will be revised to so reflect. We recognize that, due to the transaction costs associated with leasing or other market factors, licensees and other parties may wish to utilize other types of arrangements involving opportunistic use of licensed spectrum. To that end, we adopted a “private commons” option distinct from either spectrum leases or other existing arrangements. The private commons option may be particularly well-suited to meet the unique needs of market participants that incorporate “smart” or “opportunistic” use technologies within their bands.

¹ A spectrum leasing arrangement in which the licensee retains both *de jure* control of its license and *de facto* control of the leased spectrum that it leases to a spectrum lessee, pursuant to the spectrum leasing rules set forth in Part 1, subpart X of the Commission’s rules.

² A spectrum leasing arrangement in which the licensee retains *de jure* control of its license while transferring *de facto* control of the leased spectrum to a spectrum lessee, pursuant to the spectrum leasing rules set forth in Part 1, subpart X of the Commission’s rules.

³ A spectrum leasing arrangement in which the licensee retains both *de jure* control of its license and *de facto* control of the leased spectrum that it leases to a spectrum lessee, pursuant to the spectrum leasing rules set forth in Part 1, subpart X of the Commission’s rules.

⁴ A spectrum leasing arrangement in which the licensee retains *de jure* control of its license while transferring *de facto* control of the leased spectrum to a spectrum lessee, pursuant to the spectrum leasing rules set forth in Part 1, subpart X of the Commission’s rules.

a. *Spectrum manager leasing arrangements.* Under spectrum manager leasing arrangements, the Commission requires that spectrum lessees satisfy the eligibility and qualification requirements (including character qualifications) that are applicable to licensees under their license authorization. Accordingly, spectrum lessees are required to meet applicable foreign ownership eligibility requirements of Section 310 by certifying that they meet Section 310(a) requirements and, to the extent that Section 310(b) applies (*e.g.*, to the extent that they are common carriers), that they meet those requirements as well. In addition, lessees must not be persons subject to denial of Federal benefits under the Anti-Drug Abuse Act of 1988, and must certify whether they have been convicted of a felony, had a license revoked for any reason (*e.g.*, misrepresentation or lack of candor), or been convicted of unlawful monopolization.

Notification requirements. The Commission requires that spectrum manager leasing licensees provide notifications to the Commission that they have entered into this type of spectrum leasing arrangement. Licensees must notify the Commission of these leases within 14 days of execution, and at least 21 days in advance of operation. (For arrangements of one year or less, licensees must provide notice at least ten days in advance of operation.) Specifically, licensees will be required to submit the following information on each spectrum lease to the Commission: (1) necessary information on the identity of the spectrum lessee (including necessary contact information) and its eligibility to lease spectrum; (2) the specific spectrum leased (in terms of amount, frequency, and geographic area involved), including the call sign affected by the lease; (3) the term of the lease; and (4) other information required pursuant to the policies applicable to these leasing arrangements (*e.g.*, foreign ownership and other certifications relevant to the particular spectrum being leased). To the extent that the leasing involves spectrum in services in which filings are required using our Universal Licensing System (ULS), the notification must be filed electronically in ULS. Parties must maintain copies of the lease as well as any authorization issued by the Commission, and make them available for inspection upon request by the Commission or its representatives.

FCC requirements re: Notifications. The Wireless Telecommunications Bureau will place information pertaining to these leasing notifications on an informational public notice on a weekly basis except in those cases involving spectrum in services (*e.g.*, certain private services) for which there are no prior public notice requirements (*see* 47 C.F.R. § 1.933) under existing regulations. Putting these leasing notifications on public notice allows the public an opportunity to review the leasing arrangement prior to operation, provides useful information about spectrum usage, and helps ensure that licensees and lessees are complying with our interference and non-interference related policies and rules.

b. *De facto transfer leasing arrangements.* Under the *de facto* transfer leasing option, spectrum lessees may enter into long-term arrangements or short-term arrangements (defined as 360 days or less). Lessees must meet the same eligibility and qualification restrictions (including character qualifications) that are applicable to licensees under their license authorization. (These are the same requirements as for spectrum manager leasing arrangements.)

Application requirements. The Commission requires that licensees and lessees seeking to enter into *de facto* transfer leasing arrangements file applications for Commission approval of the leasing arrangements. Long-term *de facto* transfer leasing arrangements will be approved pursuant to streamlined approval procedures. For instance, long-term

de facto transfer leasing applications that are placed on public notice will be approved (or denied) within 21 days after being placed on public notice unless concerns are raised that require additional time for review; short-term leasing arrangements are subject to expedited 10-day approval processes if all conditions are met. As with spectrum manager leasing arrangements, to the extent that *de facto* transfer leasing arrangements involve spectrum in services in which filings are required using our Universal Licensing System (ULS), the applications must be filed electronically in ULS. Parties must maintain copies of the lease as well as any authorization issued by the Commission, and make them available for inspection upon request by the Commission or its representatives.

FCC requirements re: Applications. The Wireless Telecommunications Bureau will place these *de facto* transfer leasing applications on public notice on a weekly basis except in those cases in which the arrangements involve spectrum in services (*e.g.*, certain private services) for which there are no prior public notice requirements under existing regulations. If there are issues that cannot be resolved within the abbreviated time frame, the Bureau will notify applicants and remove the application from streamlined processing. Further, the Bureau will offline applications that raise competition concerns or foreign ownership issues that require further examination, and issue a public notice to that effect no later than 21 days following the initial public notice listing the spectrum lease application. Within 90 days of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

c. Private Commons Arrangement. A “private commons” arrangement is an arrangement, distinct from a spectrum leasing arrangement but permitted in the same services for which spectrum leasing arrangements are allowed, in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license authorization available to a class of third-party users employing advanced communications technologies that involve peer-to-peer (device-to-device) communications and that do not involve use of the licensee’s or spectrum lessee’s end-to-end physical network infrastructure (*e.g.*, base stations, mobile stations, or other related elements).

Notification requirements. Prior to permitting users to commence operations within a private commons, the licensee or spectrum lessee must notify the Commission, using FCC Form 608, that it is establishing a private commons arrangement. This notification must include information that describes: the location(s) or coverage area(s) of the private commons under the license authorization; the term of the arrangement; the general terms and conditions for users that would be gaining spectrum access to the private commons; the technical requirements and equipment that the licensee or spectrum lessee has approved for use within the private commons; and, the types of communications uses that are to be allowed within the private commons.

As noted on the Form OMB 83-I, this collection of information does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 158, 161, 301, 303(r), 308, 309, 310, 332 and 503.

2. The required notifications and applications will provide the Commission with useful information about spectrum usage and help 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.

3. The Commission encourages the use of electronic filing and estimates that currently. With the advent of ULS, 93% of all applications will be submitted to the FCC electronically. Electronic filing is mandatory for certain categories of respondents and others have the choice of filing manually or electronically. (These types of requirements are identified by various public notices as the radio services are implemented in ULS pursuant to the provisions of § 1.913(d).)

For leasing arrangements in many of the wireless radio services, the Commission requires licensees and spectrum lessees to file the requested information (in the notifications or applications) electronically in ULS, while it encourages the parties to file electronically in all other situations in which the regulations permit such electronic filing. The Form 608 is an electronic form that will be filed via ULS. The Commission will provide a file format to allow respondents to complete the form electronically.

4. The Commission does not impose a similar information collection on the respondents. There are no similar data available.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize burdens on all respondents, regardless of size. The Commission has limited the information requirements to those absolutely necessary for evaluating licensee compliance with Commission rules and to deter against possible abuses of the Commission's processes. The Commission will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing burdens on small businesses.
6. This proceeding is intended to aid the Commission in finding ways to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights in the wireless radio services. The rules and regulations that are implemented in this R&O are essential to ensuring that the Communications Act and the Commission's rules and policies are obeyed and that the Commission can maintain its responsibility to protect spectrum users from harmful interference. Without these reporting requirements, it would be difficult for the Commission to ensure compliance.
7. The special circumstances in this information collection are in our notification requirements. In those requirements, licensees are required to notify the Commission within 14 days of execution and at least 21 days in advance of operation (see paragraph 1a.) This requirement is requiring respondents to report information to the Commission in fewer than 30 days.
8. The Commission published a 60-day public notice which appeared in the Federal Register on January 8, 2007 (72 FR 783). No comments were received as a result of this notice. A copy of the Federal Register notice is included in this submission to the OMB.

9. Respondents will not receive any payments.
10. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR §0.459 of the FCC rules.
11. There are no requests of a sensitive nature or those considered a private matter being sought from the applicants on this collection.
12. **Hour burden estimates.** The Commission estimates that of the total number of licensees in most services who may participate in the option to enter into the types of spectrum leasing arrangements implemented in the R&O, 10% will be lessors, and 5% lessees. We estimate that 85% of licensees in most services will be non-participants. In addition, the Commission estimates that approximately 50 non-licensees per year will enter into spectrum leasing arrangements as lessees.

The Commission predicts that all of the entities affected by this 2nd R&O will use outside staff attorneys @ \$200.00/hr. to prepare the notifications or applications, which we estimate will take approximately 4 hours to prepare. We estimate that each filed notification or application should be submitted once per newly-entered leasing arrangement, and that virtually all, if not all, entities will file this information electronically using the FCC Form 608. Finally, we estimate that it will take a secretary approximately 1 hour @ the GS-8 Step 5 level, earning \$22/hr., to update and maintain copies of the files associated with the leasing arrangements.

The FCC Form 608 will be filed by all wireless licensees entering into leasing and private commons arrangements. The estimated completion time is 5 hours per filing. This includes the burden for both the licensee and the lessee.

We anticipated an estimated 1,593 responses annually.

$$1,593 \times 4 \text{ hrs (attorney)} = 6,372 \text{ hours} + 1,593 \times 1 \text{ hr (clerical)} = \mathbf{7,965 \text{ hours.}}$$

The total annual estimated burden is: 7,965 hours.

13. **Cost to Respondent:** We obtain our cost estimates from the corresponding hour burdens calculated in item #12 of this information collection.

$$1,593 \text{ respondents} \times 4 \text{ hours @ } \$200 \text{ per} + 1,593 \text{ respondents} \times 1 \text{ hour @ } \$22 \text{ per} \\ = \$1,309,446$$

The total annual estimated respondent cost is: \$1,309,446

14. Cost to Federal Government:

FCC Form 608 applications estimated to be filed: 1,593.

(Cost of printing for FCC 608 (70 pages) is estimated to be \$140 per hundred.)

$$1 (100) @ \$140 = \$140 \text{ (Printing)}$$

112 applications to be data entered at an average of 5 mins. (.084 hrs.) each using a data entry contractor @ \$32.54 hr. 109 hours @ \$32.54	=	\$306.14 (Data Entry)
1,593 applications x 1 hour @ \$29.47 per hour (GS-11, Step 5) for an Industry Analyst	=	\$ 46,945.71 (Processing)
Sub-Total	=	\$47,391.85
25% Overhead		<u>\$11,847.62</u>
Total		\$59,239.47

The total annual estimate of government cost is: \$59,239.47

15. The program changes in this information collection result from the adoption of the 2nd Report and Order in WT Docket Number 05-211. The program change is due to an increased set of respondents (AMR Entities) that re now required to complete new page 5 of the FCC Form 608.
16. The data will not be published for statistical use.
17. The Commission is requesting a continued waiver from displaying the OMB expiration date on FCC Form 608. Granting this waiver will prevent the Commission from destroying excess forms, having to update computer versions and thus reduce waste. All OMB-approved information collections are published in 47 CFR 0.408. This section includes the OMB control number, title of the collection and the OMB expiration date.
18. There are no exceptions to the "Certification Statement" in Item 19.

B. Collections of Information Employing Statistical Methods:

This information collection does not use any statistical methods.