

March 8, 2022

FEDERAL COMMUNICATIONS COMMISSION

OMB Control Number: 3060-1058

FCC Form 608

Requested Action: Non-substantive change/non-material change request

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The Federal Communications Commission submits this non-substantive change request to the Office of Management and Budget (OMB) for approval of non-substantive/non-material changes to FCC Form 608 (OMB Control Number 3060-1058). FCC Form 608 is a multipurpose form. It is used to provide notification or request approval of any spectrum leasing arrangement (Lease) entered into between an existing FCC licensee and a spectrum 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. Additionally, the form is used to notify the Commission or request Commission approval for the transfer of control of a lessee/sublessee. The form is also used to provide notification for any Private Commons Arrangement entered into between a licensee, lessee, or sublessee and a class of third-party users (as defined in Section 1.9080 of the Commission's Rules).

The Commission submits to OMB for approval the following non-substantive changes to the FCC Form 608 in order to implement licensing administration and spectrum policies that have been published in recent Commission orders, and to make general ministerial updates to the form:

- (1) Adding a checkbox to the form for any applicant who wishes to (a) Lease or Sublease all or some portion of a 3.5 GHz Priority Access License (PAL), or (b) transfer control of a lessee or sublessee holding a Lease/Sublease involving a PAL. By checking the box, the relevant party certifies that grant of the application would not result in a violation of the 40 megahertz in-band spectrum aggregation limit set forth under section 96.31 of the Commission's rules, taking into consideration the spectrum attribution rules under section 20.22(b) of the Commission's rules.
- (2) Adding a checkbox to the form for any applicant who wishes to (a) Lease or Sublease all or some portion of a 3.45 GHz license, or (b) transfer control of a lessee or sublessee holding a Lease/Sublease involving a 3.45 GHz license. By checking the box, the relevant party certifies that grant of the application would not result in a violation of the 40 megahertz in-band spectrum aggregation limit set forth under section 27.1606 of the Commission's rules, taking into consideration the spectrum attribution rules under section 20.22(b) of the Commission's rules.
- (3) Removing question 8b in the form to reflect recent changes in the Commission's rules concerning application fees.

*Change 1.* On April 21, 2015, the Commission adopted the 3.5 GHz Report and Order and Further Notice of Proposed Rulemaking in which it created service rules for shared commercial use of the 3550-3700 MHz band (3.5 GHz Band). (See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015); see also Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011 (2016);

Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598 (2018).) In doing so, it created a three-tiered access and authorization framework to coordinate shared federal and non-federal use of the band. Incumbents comprise the first tier (Incumbent Access) and receive protection from all other users, followed by PALs, the second tier (Priority Access), and General Authorized Access (GAA), the third tier.

As part of the service rules for PALs, the Commission adopted an in-band spectrum aggregation limit of 40 megahertz of the possible 70 megahertz per license area at any given time. This in-band spectrum aggregation limit applies to secondary market transactions, including certain Leases and Subleases involving PALs. In adopting this cap, the Commission concluded that the benefits of facilitating competition, innovation, and the efficient use of the 3.5 GHz band outweighed any harms of imposing such an aggregation limit. In particular, the Commission recognized that the spectrum aggregation limit will ensure the availability of PAL spectrum to at least two users in those geographic areas where there is greatest likelihood of high demand for such spectrum. The limit also provides a minimum degree of diversity among Citizens Broadband Radio Service users that likely will be operating in this band, which is important to encourage innovation in technologies and business models that include access to shared spectrum in a multi-user environment.

The 40 megahertz aggregation limit for PALs is codified under section 96.31 of the Commission's rules and became effective on August 25, 2016. 47 CFR § 96.31; 81 FR 49023. In secondary market transactions involving such licenses, the Commission will apply the criteria under section 20.22(b) of the Commission's rules to attribute certain interests related to the applicants to determine whether the transaction, if consummated, complies with the 40 megahertz aggregation limit. 47 CFR § 20.22(b). For instance, long-term de facto transfer leasing arrangements and long-term spectrum manager leasing arrangements that enable commercial use are attributable to lessees, lessors, sublessees, and sublessors. 47 CFR § 20.22(b)(5)(i). To ensure that a particular transaction post-closing complies with this spectrum aggregation limit, the Commission is currently working to modify the electronic version of the FCC Form 608 in ULS to add a certification via a checkbox. Once these modifications have been made to ULS, applicants who wish to Lease or Sublease all or some portion of a PAL, or transfer control of a lessee or sublessee holding a Lease/Sublease involving a PAL, must make the certification before submitting the form. Specifically, for these transactions, the relevant party must certify—by checking the box—that the grant of the application would not result in a violation of the 40 megahertz in-band spectrum aggregation limit set forth under section 96.31 of the Commission's rules, taking into consideration the spectrum attribution rule under section 20.22(b) of the Commission's rules. The party may make the certification/check the box if it has sought a waiver of section 96.31 in connection with the application. For a transaction involving a Lease, the licensee/lessor and lessee must make this certification. In the case of a Sublease, the lessee/sublessor and sublessee must make this certification. For a transfer of control of a lessee/sublessor, the transferee must make this certification.

This checkbox will only appear in the form if the Lease/Sublease/transfer of control involves at least one PAL or some portion thereof. The Commission will submit screenshots of the new/additional screens of FCC Form 608 to OMB once the required modifications to the form described above have been completed.

*Change 2.* On March 18, 2021, the Commission released the 3.45 GHz Second Report and Order, Order on Reconsideration, and Order of Proposed Modification which began implementation of the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020 (3.45 GHz Order). (See Facilitating Shared Use in the 3100-3550 MHz Band, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987 (2021).) The statute requires the Commission to start an auction to grant new initial licenses subject to flexible use in the 3450-3550

MHz band by December 31, 2021. The auction started on October 21, 2021, and concluded on January 14, 2022.

In adopting the 3.45 GHz Order, the Commission made available 100 megahertz of mid-band spectrum in the 3.45 GHz band available for flexible use. Like for PALs, the service rules for this band also included an in-band aggregation limit of 40 megahertz. In implementing this in-band aggregation limit, the Commission sought to balance the statutory objectives informing the Commission's design and implementation of competitive bidding systems because this limit will, for example, help to promote spectrum access and encourage competition in the provision of 5G service, while still supporting the efficient and intensive use of spectrum. For instance, the Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is assigned in a manner that serves the public interest, convenience, and necessity. 47 U.S.C. §§ 303(g), 307, 308(b), 310. Additionally, section 309(j)(3) of the Communications Act provides that, in designing systems of competitive bidding, the Commission must "include safeguards to protect the public interest in the use of the spectrum," and must seek to promote various objectives, including "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants," and promoting the "efficient and intensive use" of spectrum. 47 U.S.C. § 309(j)(3). This in-band aggregation limit will be in effect for four years after the close of the auction, i.e., January 14, 2026.

The 40 megahertz aggregation limit for 3.45 GHz licenses is codified under section 27.1606 of the Commission's rules and was effective on June 7, 2021. 47 CFR § 27.1606; 86 FR 17920. In secondary market transactions involving such licenses, the Commission will apply the criteria under section 20.22(b) of the Commission's rules to attribute certain interests related to the applicants to determine whether the transaction, if consummated, complies with the 40 megahertz aggregation limit. 47 CFR § 20.22(b). For instance, long-term de facto transfer leasing arrangements and long-term spectrum manager leasing arrangements that enable commercial use are attributable to lessees, lessors, sublessees, and sublessors. 47 CFR § 20.22(b)(5)(i). To ensure that a particular transaction post-closing complies with this spectrum aggregation limit, the Commission is currently working to modify the electronic version of the FCC Form 608 in ULS to add a certification via a checkbox. Once these modifications have been made, applicants who wish to Lease or Sublease all or some portion of a 3.45 GHz license, or transfer control of a lessee or sublessee holding a Lease/Sublease involving a 3.45 GHz license, must make the certification before submitting the form. Specifically, for these transactions, the relevant party must certify—by checking the box—that the grant of the application would not result in a violation of the 40 megahertz in-band spectrum aggregation limit set forth under section 27.1606 of the Commission's rules, taking into consideration the spectrum attribution rule under section 20.22(b) of the Commission's rules. The party may make the certification/check the box if it has sought a waiver of section 27.1606 in connection with the application. For a transaction involving a Lease, the licensee/lessor and lessee must make this certification. In the case of a Sublease, the lessee/sublessor and sublessee must make this certification. For a transfer of control of a lessee/sublessor, the transferee must make this certification.

This checkbox will only appear in the form if the Lease/Sublease/transfer of control involves at least one 3.45 GHz license or some portion thereof. Consistent with the termination of the in-band spectrum aggregation limit four years after the close of the auction, the certification in the form will no longer be pertinent after January 14, 2026. The Commission will submit screenshots of the new/additional screens of FCC Form 608 to OMB once the required modifications to the form described above have been completed.

*Change 3.* On December 29, 2020, the Commission adopted a Report and Order that significantly amended FCC application fees. (See Amendment of the Schedule of Application Fees Set Forth in

Sections 1.1102 through 1.1109 of the Commission's Rules, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 5089 (2020)). As a result, the Commission will no longer calculate waiver fees according to the number of rule waivers requested, and applicants are only required to indicate that they are requesting a waiver. Accordingly, question 8b, which requests the number of rules involved in the request, is being deleted and is no longer necessary.

These non-substantive changes will not impact on the annual burden hours or the annual cost for this collection.