

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
CTIA-USTelecom Petition for) WT Docket No. 20-186
Rulemaking and Declaratory Ruling)
Regarding Certain *Pro Forma*)
Transactions)

To: The Commission

**COMMENTS
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

The Land Mobile Communications Council (“LMCC”) hereby submits its comments in response to the Wireless Telecommunications Bureau (“WTB”) Public Notice requesting comment on the above-identified Petition (“Petition”) filed jointly by CTIA – The Wireless Association (“CTIA”) and USTelecom (“USTelecom”) (jointly, “Petitioners”).¹ The Petition asks that the Federal Communication Commission (“FCC” or “Commission”) modify its rules and issue a declaratory ruling to establish more uniform, simpler regulations governing wireless applications for *pro forma* assignments and transfers of control. The LMCC fully supports this common-sense proposal that will reduce regulatory burdens on FCC staff and licensees while complying fully with the directives of the Communications Act of 1934, as amended.

I. Introduction

The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile

¹ *Comment Sought on CTIA-USTelecom Petition for Rulemaking and Declaratory Ruling Regarding Certain Pro Forma Transactions*, WT Docket No. 20-186, Public Notice, DA 20-661 (rel. June 24, 2020) (“Public Notice”).

radio equipment. The LMCC acts with the consensus and on behalf of the vast majority of public safety, business, industrial, transportation, and private commercial radio users, as well as a diverse group of land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- American Association of State Highway and Transportation Officials (“AASHTO”)
- American Automobile Association (“AAA”)
- American Petroleum Institute (“API”)
- Association of American Railroads (“AAR”)
- Association of Public-Safety Communications Officials-International, Inc. (“APCO”)
- Aviation Spectrum Resources, Inc. (“ASRI”)
- Enterprise Wireless Alliance (“EWA”)
- Forest Industries Telecommunications (“FIT”)
- Forestry-Conservation Communications Association (“FCCA”)
- Government Wireless Technology & Communications Association (“GWTC”)
- International Association of Fire Chiefs (“IAFC”)
- International Municipal Signal Association (“IMSA”)
- MRFAC, Inc. (“MRFAC”)
- Telecommunications Industry Association (“TIA”)
- The Monitoring Association (“TMA”)
- Utilities Technology Council (“UTC”)
- Wireless Infrastructure Association (“WIA”)

These organizations work with their members to educate them regarding FCC licensing requirements and thereby promote the timely filing of applications that are consistent with applicable FCC rules. Clarifying and simplifying the *pro forma* assignment and transfer rules as proposed in the Petition would facilitate that effort.

II. The Current Rules Governing *Pro Forma* Assignment and Transfer of Control Applications for Wireless Services Are Burdensome and Do Not Contribute to Fulfillment of the Commission’s Oversight Responsibilities

Pro forma assignments and transfers of control, by definition, involve only non-substantial changes in the ownership of wireless licenses. They can occur, for example, when the 100% shareholder of a license assigns the authorization from the company to the shareholder individually or to a trust controlled by the shareholder for estate planning purposes. These types of changes

frequently arise in the context of an internal reorganization of a licensee entity, often triggered by tax or other considerations entirely unrelated to the FCC licenses. A new subsidiary may be interjected to hold the stock of a licensee entity although the new subsidiary has the same ownership as the licensee. Similarly, assets, including FCC licenses, may be moved from one subsidiary to another, both of which have the same controlling entity.²

While these activities can take place in entities of any size or complexity, they are more common in very large enterprises with multiple subsidiaries. Most LMCC members represent some number of large entities that are not in the telecommunications business. They hold private licenses issued most frequently under Parts 90 and 101 of the FCC rules that are used to support their primary, non-communications activities and do not provide commercial communications service to third parties. These licensees typically do not hold FCC authorizations that require them to file an FCC Form 602, Ownership Disclosure Information. Since the FCC does not inquire into the ownership when the licenses are issued initially, it is not intuitive to these companies that the Commission must grant prior approval if there is even a *pro forma* change in the internal structuring of the organization.

The Petition describes in detail the burden these non-substantive assignment and transfer applications can involve, both for the licensee and the FCC. They can require the submission of multiple, sometimes hundreds of forms that the applicant must prepare and FCC staff must process. The cost can be considerable, particularly for private wireless licensees that typically hold site-based FCC authorizations rather than geographic licenses. Very large private enterprises often hold hundreds or even thousands of licenses. The application processing fee for each additional Part 90

² See, e.g., *Questions & Answers Regarding Private Wireless Licensees' Obligations Under Section 310(d) of the Communications Act of 1934*, Federal Communications Commission Fact Sheet (rel. Sept 19, 2000); *erratum* (rel. Oct. 25, 2000).

and Part 101 call sign in a *pro forma* assignment or transfer application is \$70. While the cost may not be significant for a large business, and is justified when the application involves a substantial change in ownership that requires careful FCC review, it is not a productive use of funds when the change is *pro forma*, an action assumed presumptively to be in the public interest by the FCC.³ As stated in the Petition, “To the Associations’ knowledge, the Commission has never refused to consent to a *pro forma* transaction.”⁴

Section 310(d) of the Communications Act requires the FCC to make a finding that the public interest, convenience, and necessity will be served before allowing the assignment or transfer of control of an FCC license.⁵ This bedrock statutory obligation ensures that the FCC will satisfy itself regarding the qualifications of an assignee or transferee before allowing the “transaction” to be consummated. When the controlling ownership of the enterprise will change as a result of the transaction, this requirement fulfills a vital regulatory purpose. However, as noted in the Petition, no such purpose is accomplished in *pro forma* changes as the FCC already has ruled on and accepted the qualifications of the controlling entity. The Petition presents a compelling argument for a change in the current rules and lays out a path that is entirely consistent with the directives of the Communications Act.⁶

III. Non-Common Carrier Licensees Should be Exempt from All *Pro Forma* Filing Requirements; If Notification is Required, it Should be by Post-Consummation Notification, not Prior Approval

The Petition proposes that the FCC replace current prior approval requirements for *pro forma* wireless assignment and transfer of control applications with a post-closing notification

³ See, e.g., Petition at n. 30.

⁴ Petition at 2.

⁵ 47 U.S.C. § 310(d).

⁶ The LMCC also supports the Petitioners’ request for a Declaratory Ruling that clarifies what changes qualify as *pro forma* and what rules apply to each of the various categories of wireless licensees.

process. That approach would be preferable to the current requirement and would mirror the Commission's 1998 adoption of a post-closing notification provision for *pro forma* assignment and transfer applications for common carrier licenses held by telecommunications carriers based on the Commission's forbearance authority.⁷

But the LMCC urges the FCC to consider even greater relief, at least for non-common carrier licensees, consistent with the Commission's commitment to eliminate burdensome regulatory underbrush whenever possible. The FCC already has found that prior approval of *pro forma* assignments and transfers in certain licensed services is not required by the Communications Act. In its 2002 streamlining of the rules governing section 214 authorizations the FCC relied on the following determinations in its decision to eliminate all filing requirements for *pro forma* transactions:

We conclude that *pro forma* transactions in general have no impact, or a *de minimis* impact, on the public interest....⁸

We...agree with commenters who contend that we should confer blanket section 214 authority for *pro forma* restructurings where the transactions would result in no changes in the carrier's ultimate ownership or control. This blanket grant would eliminate the need for the Commission to issue written approval of the transaction.⁹

In that proceeding, the Commission also explicitly rejected recommendations from parties that urged a post-consummation notice requirement:

We decline to adopt commenters' suggestions that we require applicants to file post-consummation notices of *pro forma* transactions.¹⁰

⁷ Petition at 5-6; See *Communications Bar Ass'n's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telcomms. Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293 (1998).

⁸ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 at ¶ 50 (2002).

⁹ *Id.* at ¶ 51.

¹⁰ *Id.* at ¶ 54.

The Commission had reached a similar conclusion with regard to its statutory obligation as long ago as 1985 when it eliminated certain filing requirements for licensees in the Cable Television Relay Service. No application is needed “where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee.”¹¹

Having determined, in the LMCC’s opinion correctly, that the Communications Act does not mandate FCC approval of assignments and transfers for those license categories when the controlling ownership has not changed, the Commission should extend relief from that burdensome and unnecessary filing requirement to all wireless licenses.¹² If the FCC believes the public interest is served by retention of the post-closing notification requirement for common carrier licensees, it nevertheless should exempt licensees of non-common carrier systems from all filing requirements. Private systems, by definition, do not provide service to the public. Wireless facilities are used to conduct business and governmental activities more safely and efficiently. The ownership of these licenses typically is not a matter of record with the FCC.¹³ There is no obvious public interest in requiring these licensees to report internal changes that leave that controlling ownership undisturbed. Of course, an application must be filed to effect the assignment of an authorization from one entity to another, even if they are under common ownership, but prior approval of such applications should not be required. Such filings should be considered as notifications only.

¹¹ Petition at 5; citing *Amendment of Part 78 of the Commission’s Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service*, Report and Order, 100 FCC 2d 1136 at ¶ 12 (1985).

¹² The LMCC also endorses the position that changes in corporate form in which the licensee retains its same federal taxpayer identification (“TIN”) number should not be treated even as *pro forma* changes, but as permissible administrative updates. Petition at 15. If that requires updates to the ULS system, in the interim licensees should be permitted to notify the FCC by letter listing the call signs involved and the FCC itself can make the necessary changes to the licensee entity type. The public interest would not be jeopardized by this approach as there are other publicly available governmental portals where such changes are recorded.

¹³ Private licensees that acquire auctioned spectrum, either by participating in the auction process or through secondary market transaction, are required to disclose their ownership by filing FCC Form 602s.

The LMCC appreciates that many private licensees qualify for conditional authority under FCC Rule Section 90.159(c) upon the filing of an application for either substantive or *pro forma* assignments and transfers of control and that most such applications are processed under the Immediate Approval Procedures set out in FCC Rule Section 1.948(j)(2). These provisions largely eliminate the delays that sometimes accompany assignment and transfer applications that do not qualify under either of those rules. But applications that are processed quickly still can require substantial time and cost to prepare and as noted above can trigger very large FCC filing fees depending on the number of call signs involved. Allowing *pro forma*, non-substantive transactions to take place without FCC involvement through either prior approval or post-closing notification would allow those resources to be put to more productive use without in any way compromising the Commission's statutory obligation to review the qualifications of its licensees or to ensure that spectrum is used in furtherance of the public interest.

If the FCC concludes that it must exercise oversight of even *pro forma* assignments and transfers of control of non-common carrier licenses, the LMCC urges that the less burdensome post-notification process be adopted for all the reason set out in the Petition.

IV. Adoption of the Proposed Rule Changes Should Not be Delayed Until ULS and the Forms 603/608 Have Been Modified

The LMCC agrees with the Petition's recommendations regarding modification of FCC Forms 603 and 608 for *pro forma* assignment and transfer of control applications. It also agrees that ULS should be modified to allow the use of administrative updates to report changes in entity type when there is no change in the licensee's TIN.¹⁴ But adoption of the rule changes proposed herein should not depend on completion of those efforts. Implementing changes to governmental forms and databases can be a lengthy process and requires budget approvals that may be particularly

¹⁴ See n. 12, *supra*.

challenging at this time. The modifications proposed by Petitioners are well-conceived and the LMCC supports them, but they are not a pre-requisite to the objective of the Petition: adoption of streamlined, less burdensome, and less costly requirements for wireless *pro forma* assignments and transfer of controls.

V. Conclusion

This Commission has made a commitment to eliminate unnecessary regulatory requirements and has taken numerous steps toward that objective. It can relieve its own staff and its wireless licensees of the burden involved in the preparation and processing of applications for *pro forma* assignments and transfers of control. Its authority to adopt the rules proposed has been confirmed by its decisions regarding these applications in other licensed services. The LMCC urges prompt and favorable action on the Petition.

Respectfully submitted,

**LAND MOBILE COMMUNICATIONS
COUNCIL**

A handwritten signature in blue ink that reads "Klaus Bender". The signature is written in a cursive style and is positioned above a horizontal line.

Klaus Bender, PE
President
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July 24, 2020