

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Partitioning, Disaggregation, and)	WT Docket No. 19-38
Leasing of Spectrum)	

COMMENTS OF CTIA

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CTIA¹ submits these comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) released by the Federal Communications Commission (“Commission”) requesting input on whether it should establish a program, or modify existing programs, for the partitioning, disaggregation, and leasing of spectrum licenses in order to help close the digital divide and increase access to spectrum by small and rural carriers.²

I. INTRODUCTION AND SUMMARY.

CTIA appreciates the Commission’s ongoing efforts to close the digital divide and to increase access to spectrum by small and rural carriers through its partitioning, disaggregation, and spectrum leasing rules. As the *NPRM* points out, there have already been thousands of Commission-approved secondary market transactions that have provided small and rural carriers access to spectrum. Moreover, nationwide and regional carriers continue to expand their rural footprints, not only improving the scope and speed of their coverage in rural and high-cost areas,

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² See *Partitioning, Disaggregation, and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22 (rel. Mar. 15, 2019) (“*NPRM*”).

but also creating additional opportunities for those carriers to engage in secondary market transactions with small and rural providers within their expanded footprints.

While nationwide and regional carriers remain committed to partnering with small and rural providers, driven by marketplace forces, the Commission can and should take additional steps to reduce any remaining friction in its partitioning, disaggregation, and spectrum leasing processes. Specifically, the Commission should:

- **Remove any barriers to secondary market transactions**, including by streamlining the approval processes for leases and transfers.
- **Create greater incentives for providers to enter into secondary market transactions**, including by extending for one year the final buildout requirements where a party engages in certain secondary market transactions and by permitting licensees to reaggregate their previously partitioned or disaggregated spectrum licenses.
- **Modernize its information technology (“IT”) infrastructure**, including by (1) updating its forms for assignments, transfers, and leases; (2) providing licensees with the technical means to reaggregate their licenses through a simple and consistent process; and (3) considering making licensing information in its Universal Licensing System (“ULS”) more transparent by reviving its Spectrum Dashboard so that interested parties have the information they need in a clear and usable manner to enter into secondary market transactions.

By taking these steps, as described in more detail herein, the Commission can foster an even more robust secondary market, thereby increasing deployment in rural areas and facilitating the ability of small carriers to access critical spectrum resources.

II. RURAL WIRELESS COVERAGE CONTINUES TO EXPAND AND IS FACILITATED BY SECONDARY MARKET TRANSACTIONS.

The Commission seeks comment on what, if any, changes to its partitioning, disaggregation, and spectrum leasing rules would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers.³

³ *Id.* ¶ 14; *see also* MOBILE NOW Act as incorporated in the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348, Division P, Title VI, § 616(a)(1) (2018) (defining “covered small carrier”); *NPRM* ¶ 20 (seeking comment on applying any rule revisions to an expanded class of licensees).

Licenses currently engage in secondary market transactions, and rural wireless coverage has been expanding through multiple marketplace forces and government programs. Those forces are expected to intensify as wireless providers continue to improve their networks and more spectrum is brought to market.

A. Rural Coverage is Expanding Through Multiple Marketplace Forces and Government Programs.

Wireless service providers have made significant strides in expanding coverage in rural areas, providing rural Americans with greater choices in innovative wireless technologies.⁴ As the Commission recently reported, approximately 98 percent of all Americans and 90.9 percent of rural Americans had a choice of at least three Long Term Evolution (“LTE”) service providers last year—a 6.7 percentage point increase from the previous year.⁵ Regional and nationwide carriers alike have also begun testing and deploying 5G services.⁶

This positive trend is likely to continue as both regional and nationwide providers continue to expand their rural footprints. T-Mobile, for example, has deployed its 600 MHz spectrum to provide LTE coverage in rural areas, activating this spectrum in more than 1,254 cities and towns across the U.S. and laying the foundation for nationwide 5G.⁷ This effort

⁴ See Comments of CTIA, WT Docket No. 18-203, at 2-3, 32-34 (filed July 26, 2018) (“CTIA 2018 Wireless Competition Comments”); Letter from Kara Graves, Director, Regulatory Affairs, CTIA, to U.S. Dep’t of Agriculture, Farm Service Agency, at 2-3 (dated Apr. 1, 2019).

⁵ See *Consolidated Communications Marketplace Report*, First Report, FCC 18-181 ¶ 46 (rel. Dec. 26, 2018); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, 9020, Chart III.D.11 (2017).

⁶ See CTIA 2018 Wireless Competition Comments at 33.

⁷ See News Release, T-Mobile, T-Mobile 600 MHz Extended Range LTE Now Live in More Than 1,250 Cities & Towns, Laying the Foundation for 5G (Sept. 10, 2018), <https://www.t-mobile.com/news/600-mhz-update-puerto-rico>; see also T-Mobile, *T-Mobile LTE-Advanced Cities & Towns* (Jan. 2019), https://www.t-mobile.com/content/dam/t-mobile/corporate/media-library/public/documents/T-Mobile-LTE-A-Cities-and-Towns.pdf/_jcr_content/renditions/original.

reflects T-Mobile's focus on building out its network using 600 MHz spectrum in rural areas that were previously unserved by its 700 MHz spectrum.⁸ AT&T, through its fixed wireless Internet service offerings and its contract with FirstNet, is also enhancing rural connectivity and reports that it is committed to filling rural coverage gaps.⁹ In addition, regional providers like East Kentucky Network and Bluegrass Cellular are investing in rural areas across the country, improving the scope and speed of their coverage.¹⁰

There are also numerous examples of the Commission's secondary market policies successfully fostering the deployment of wireless services in rural areas and providing access to spectrum by small carriers. For example, as the Commission observed, AT&T, through New Cingular Wireless PCS, LLC, has disaggregated Broadband Personal Communications Service ("PCS") C Block spectrum to Coral Wireless LLC.¹¹ T-Mobile has likewise partitioned its Broadband PCS A Block license to FWC Communications Inc.¹² And Verizon has partitioned its 700 MHz A Block license to Texas Energy Network, LLC.¹³ Verizon has also partnered with small and rural providers through its LTE in Rural America program, which has allowed small

⁸ See News Release, T-Mobile, T-Mobile Lights Up World's First 600 MHz LTE Network at Breakneck Pace (Aug. 15, 2017), <https://www.t-mobile.com/news/cheyenne-600-mhz>.

⁹ See AT&T, *Connecting Rural America: Delivering Fixed Wireless Internet Through New Technologies* (Sept. 26, 2018), https://about.att.com/story/2018/fixed_wireless_rural_america.html; AT&T, *AT&T Fills in Rural Coverage Gaps With Its FirstNet Build, New Cell Site Planned for Bedford County* (July 20, 2018), https://about.att.com/story/att_expands_rural_coverage_of_firstnet.html.

¹⁰ See CTIA 2018 Wireless Competition Comments at 33.

¹¹ See *NPRM* ¶ 5, n.11 (citing Coral Wireless, LLC, ULS File No. 0005674615 (filed Mar. 14, 2013)).

¹² See *id.* (citing FWC Communications, Inc., ULS File No. 0005330996 (filed Sept. 6, 2012)).

¹³ See *id.* (citing Texas Energy Network, LLC, ULS File No. 0005207547 (filed May 14, 2014)).

and rural providers to build 4G LTE networks in their communities using 700 MHz and AWS-1 spectrum leased from Verizon.¹⁴

The Commission has recognized that there is an active secondary market for spectrum leases and partitioned and disaggregated licenses, including transactions involving small and rural entities. Indeed, it previously rejected claims that small entities are unable to participate in secondary market transactions.¹⁵ To the contrary, the Commission notes in the *NPRM* that, over the last ten years, it has received more than 1,000 assignment applications involving partitioning and disaggregation and more than 8,000 spectrum lease applications.¹⁶

The Commission's upcoming Mobility Fund Phase II ("MF-II") auction will further encourage investment and deployment in rural areas, including through the use of secondary market transactions. The MF-II auction will make available up to \$4.53 billion in support over ten years to primarily rural areas that lack unsubsidized 4G LTE service.¹⁷ Not only will the Commission allow recipients of MF-II support to lease spectrum in order to provide the required services, but it will also allow applicants to make their spectrum leases contingent on winning the support,¹⁸ providing carriers the incentive they may need to enter into secondary market transactions to serve rural areas even if they are not certain they will be auction winners.

¹⁴ See Comments of Verizon, WT Docket No. 18-203, at 18 (filed July 26, 2018).

¹⁵ See, e.g., *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598, 16052 ¶ 101 (2018) ("2018 3.5 GHz Report and Order") (acknowledging that "Commission records reflect that there is an active secondary market for partitioned and disaggregated licenses").

¹⁶ See *NPRM* ¶¶ 5, 10; see also *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10652 ¶ 101.

¹⁷ See *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2152 ¶ 1 (2017).

¹⁸ See *id.* at 2203-04 ¶¶ 123-24.

B. The Marketplace is the Best Mechanism Through Which These Efforts Can Be Supplemented.

The Commission should recognize that the marketplace is the best mechanism through which efforts by industry and the Commission can be supplemented. In areas where providers are unable, or find it economically infeasible, to provide service, they have incentives to engage in secondary market transactions with small or rural providers who have the ability to provide that service. Instead of generating no revenue from an area they may not serve, nationwide and regional providers may instead choose to sell or lease their spectrum in that area to small or rural providers. Not only does this enable the original provider to realize the value of the spectrum, but it also serves customers who may be underserved or unserved. As Verizon has noted, the Commission need not “compel[] licensees to enter into private, commercial transactions” with small and rural providers because it can, and does, rely upon “market forces and economic incentives to drive spectrum to its most beneficial public use.”¹⁹

III. THE COMMISSION SHOULD ELIMINATE UNNECESSARY BARRIERS TO SECONDARY MARKET TRANSACTIONS AND IMPLEMENT POLICIES THAT ENCOURAGE MORE IMMEDIATE ACCESS TO SPECTRUM.

The Commission seeks comment on whether its existing secondary market rules are sufficiently flexible to incentivize licensees to sell or lease their spectrum rights.²⁰ It further asks whether the agency’s spectrum leasing rules requiring Commission consent to an application prior to consummation deter such transactions.²¹ Although, as noted above and in the *NPRM*, wireless service providers engage in secondary market transactions today, reducing procedural

¹⁹ Comments of Verizon, GN Docket No. 17-258, GN Docket No. 12-354, at 14-15 (filed Dec. 28, 2017).

²⁰ See *NPRM* ¶ 26.

²¹ See *id.* ¶ 25.

burdens and creating additional flexibility in the Commission’s rules could further facilitate secondary market transactions to the benefit of smaller carriers, particularly in rural areas.

A. The Commission Should Eliminate Unnecessary Impediments to Spectrum Leasing.

The Commission should consider condensing and reforming the many rules governing spectrum lease approvals into a simple rule that requires, in most cases, only that the Commission receive prior notification—rather than Commission approval—of a spectrum lease.²² Simplifying the regulatory processes for licensees and lessees would allow for more efficient and faster lease transactions and would more promptly promote the public interest by permitting “additional spectrum users to gain ready access to spectrum” for the provision of new and diverse services.²³

In the alternative, if the Commission maintains those provisions of its current spectrum leasing paradigm that require prior approval, the Commission should ensure that its “immediate approval procedures” apply to *all* spectrum lease filings that meet the eligibility requirements specified in the Commission’s rules.²⁴ As the *NPRM* acknowledges, the Commission’s rules provide that applications that meet certain criteria will be eligible for immediate processing by

²² See Comments of Verizon, IB Docket No. 18-377 *et al.*, at 6-7 (filed Feb. 8, 2019) (“Verizon 2018 Biennial Review Comments”); Comments of Verizon, IB Docket No. 16-131 *et al.*, at 7-8 (filed Dec. 5, 2016) (“Verizon 2016 Biennial Review Comments”).

²³ *NPRM* ¶ 6.

²⁴ See Verizon 2018 Biennial Review Comments at 6-7; Verizon 2016 Biennial Review Comments at 7-8; Reply Comments of AT&T Services, Inc., WT Docket No. 18-374, WC Docket No. 18-378, at 4-5 (filed Mar. 11, 2019) (“AT&T 2018 Biennial Review Reply Comments”); *see also* Reply Comments of T-Mobile USA, Inc., IB Docket No. 18-377 *et al.*, at 3 (Mar. 11, 2019) (“T-Mobile 2018 Biennial Review Reply Comments”). However, the Commission should only allow streamlined processing of *de facto* transfer leases (either through prior notification or immediate approval procedures) in instances where the parties demonstrate (*e.g.*, via certifications) that they qualify for such immediate approval procedures and the transaction does not raise any competitive concerns. As discussed below, the Commission should preserve its current ability to evaluate competition and spectrum aggregation for *de facto* leases.

the Commission,²⁵ allowing parties to proceed with their transaction the next day. However, as CTIA members have explained, some applications are “offlined” and subject to more cumbersome “general approval procedures” even when they qualify for immediate processing.²⁶ For example, applications may be “offlined” if related applications have been filed with other bureaus or offices, or if not all licenses associated with the application have been fully constructed.²⁷ In addition, applications may be “offlined” if some aspect of the application (*e.g.*, identity of the applicant, the spectrum being applied for, or the type of license being sought) flags the application for placement on the Commission’s internal “Alert List.”²⁸ These unwritten reasons create regulatory uncertainty and result in unnecessary delays in getting spectrum to market, ultimately harming potential consumers.²⁹

The Commission should remove this uncertainty and ensure that transactions having no impact on competition can be granted as expeditiously as possible. Indeed, as the Commission recognized in adopting a unified license renewal standard, “[a] clear, consistent standard will promote the efficient use of spectrum resources and will serve the public interest by providing licensees certainty.”³⁰ CTIA emphasizes that it does not propose any changes to the

²⁵ See *NPRM* ¶¶ 8-9; 47 C.F.R. §§ 1.9020(e)(2); 1.9030(e)(2).

²⁶ See Verizon 2018 Biennial Review Comments at 6-7; AT&T 2018 Biennial Review Reply Comments at 5.

²⁷ See AT&T 2018 Biennial Review Reply Comments at 5.

²⁸ See FCC, Wireless Telecommunications Bureau, License Search Help, Glossary, <https://wireless2.fcc.gov/helpfiles/licenseSearch/helpGlossary.html> (last visited May 29, 2019).

²⁹ See Verizon 2018 Biennial Review Comments at 7; AT&T 2018 Biennial Review Reply Comments at 4.

³⁰ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, & 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8877 ¶ 9 (2017) (“2017 WRS Order”) (adopting a unified renewal standard for most Wireless Radio Services licensees).

Commission’s “immediate approval procedures.” It merely requests that applications that qualify for immediate processing, in fact, receive immediate processing.

CTIA also cautions that, in making any changes to the Commission’s spectrum leasing rules and/or procedures, the Commission should preserve its current ability to evaluate competition and spectrum aggregation for *de facto* leases.³¹ Long-term *de facto* transfer leases give lessees effective control over valuable spectrum resources, including by serving, in some cases, as interim mechanisms that lead to permanent control over the spectrum. The Commission should therefore retain its ability to evaluate the competitive impact of a lease,³² which could involve, for instance and as discussed below, revising questions on the applicable form to ensure that only applications that warrant review under the Commission’s general approval procedures are appropriately offlined for that review.³³

B. The Commission Should Streamline the Processing of Certain Secondary Market Transactions.

The Commission should also streamline the approval process for simple block-for-block spectrum swaps within the same footprint. These transactions do not change a provider’s overall spectrum portfolio in its geographic footprint and therefore do not raise any competitive concerns.³⁴ In addition, for spectrum swaps involving parties that were already Commission licensees, the Commission will have previously assessed their qualifications to hold authorizations, thereby ensuring that the licenses are issued only to qualified entities.³⁵

³¹ See T-Mobile 2018 Biennial Review Reply Comments at 3.

³² See *id.* at 3-4.

³³ See AT&T 2018 Biennial Review Reply Comments at 5.

³⁴ See Verizon 2018 Biennial Review Comments at 5; AT&T 2018 Biennial Review Reply Comments at 5-6; T-Mobile 2018 Biennial Review Reply Comments at 1.

³⁵ See T-Mobile 2018 Biennial Review Reply Comments at 1.

Importantly, block-for-block spectrum swaps allow providers to harmonize their spectrum holdings and create greater spectrum contiguity, which can enhance providers' network performance as parties seek to deploy wider channels to support mobile broadband services and increase the quality of services that they provide to their customers.³⁶ It also produces greater spectrum efficiencies that may create the additional capacity that will make providers more inclined to offer spectrum resources to small and rural carriers.

In light of these benefits, the Commission should consider changing its rules and/or processes to ensure that applications for simple block-for-block spectrum swaps receive *pro forma* treatment, requiring only prior notice to the Commission and not approval.³⁷ Delaying these transactions by otherwise subjecting them to unnecessarily burdensome review offers no public interest benefits and inefficiently limits the use of spectrum.

IV. TO FURTHER PROMOTE RURAL DEPLOYMENT AND ENCOURAGE SECONDARY MARKET TRANSACTIONS, THE COMMISSION SHOULD ADOPT APPROPRIATE INCENTIVES.

The Commission seeks comment on potential modifications to its performance requirements for partitioned or disaggregated licenses—including, for example, by extending by one year a receiving party's construction deadline for a partitioned or disaggregated license—in order to increase service to rural areas.³⁸ Pursuant to its directive under Section 616 of the MOBILE NOW Act, the Commission also asks about incentives that may be appropriate to encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas, including by permitting the reaggregation of previously partitioned or

³⁶ See Comments of AT&T, WT Docket No. 16-137, at 5 (filed May 31, 2016).

³⁷ See Verizon 2018 Biennial Review Comments at 5; T-Mobile 2018 Biennial Review Reply Comments at 1.

³⁸ See NPRM ¶¶ 14, 16-17.

disaggregated licenses.³⁹ While wireless service providers are actively engaged in secondary market transactions, and the procedural changes suggested above can facilitate those transactions, the Commission can further encourage licensees to lease or sell spectrum to small or rural carriers by implementing sensible, market-based incentives.

A. The Commission Should Briefly Extend Final Buildout Requirements for Certain Partitioned and Disaggregated Licenses.

Smaller carriers and carriers that seek to serve rural areas may be deterred from entering into secondary market transactions later in a license term if there is limited time to fulfill performance obligations. As a result, that spectrum may go unused even though the receiving party could have satisfied the performance obligations shortly after the deadline. Thus, CTIA agrees that when a transaction occurs late in a license term—*e.g.*, within one or two years of the construction deadline—the Commission should afford the receiving party a brief extension of one year to fulfill the construction obligations. CTIA, however, also agrees that grant of the one-year extension should be limited to requests filed no later than six months before the construction deadline in order to prevent the filing of a transaction and extension request late in the construction period merely to avoid the loss of a license.⁴⁰

A brief extension will provide receiving parties the necessary relief that will promote rural deployment. For instance, if after partitioning or disaggregation, a receiving party has built out a portion of a license in a rural area, but is unable to fully satisfy the performance obligation by the standard performance deadline, an extension may enable them to cross the finish line. Allowing the provider to do so in an extended term would produce a better result than the

³⁹ See *id.* ¶¶ 25, 27-28.

⁴⁰ See *id.* ¶ 17.

Commission's recapture of the partitioned or disaggregated license, which would leave the already-covered population unserved or with reduced service options.

In addition, recapturing a license area instead of allowing a receiving party more time to meet performance requirements would risk allowing the spectrum to lie fallow as it sits in the Commission's inventory awaiting re-auction—a process that can sometimes take several years. For instance, it took more than three years for the Commission to re-auction licenses in the 700 MHz band on which winning bidders defaulted.⁴¹ The public interest would be better served if the Commission, in certain instances, provides more time to meet final performance requirements rather than permit the spectrum to remain fallow in inventory.

B. The Commission Need Not Reduce the Substantive Performance Requirements for Small Covered Carriers in Rural Areas.

Although the temporal incentives described above could be beneficial in facilitating secondary market transactions and rural buildout, the Commission need not, as it suggests, substantively adjust the performance requirements (*i.e.*, reduce buildout requirements) applicable to partitioned or disaggregated licenses.⁴² Allowing a later licensee to meet reduced coverage requirements would be inequitable because, had the Commission reduced the coverage requirements for the initial licensee, that provider may have been able to meet the reduced requirements in the first instance. Moreover, the goal of the Commission's reforms in this proceeding should be to ensure that receiving parties secure spectrum to provide a robust level of service, especially in rural areas. While affording providers more time to satisfy performance

⁴¹ See *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92*, Public Notice, 26 FCC Rcd 3342, 3344 ¶ 3 (2011) (explaining that the licenses being auctioned were offered in Auction 73, which concluded in 2008, and remained unsold or were licenses on which a winning bidder defaulted).

⁴² See *NPRM* ¶ 16.

requirements may achieve that goal, reducing performance requirements would benefit only the receiving party; it would do little to help close the digital divide.

Declining to substantively reduce performance requirements for partitioned or disaggregated licenses would likewise align with the Commission's goals in its proceeding implementing a unified regulatory framework for the Wireless Radio Services—*i.e.*, to ensure that the *original* construction obligation is satisfied. As the Commission explained in that proceeding, “[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place.”⁴³

C. The Commission Should Permit, But Not Require, Reaggregation of Spectrum That Has Been Partitioned or Disaggregated on the Secondary Market.

To further incentivize parties to enter into secondary market transactions, the Commission should permit, but not require, licensees to reaggregate previously partitioned or disaggregated licenses.⁴⁴ As the Commission observes, there is no specific provision in its rules or procedures for reaggregating spectrum, even when the partitioned or disaggregated portions of an original license are acquired by a single entity.⁴⁵ And holding multiple licenses for what was once a single license may impose certain regulatory and administrative burdens on licensees, including construction requirements, renewal demonstrations, continuous service requirements,

⁴³ 2017 WRS Order, 32 FCC Rcd at 8886 ¶ 26 (internal citations omitted).

⁴⁴ See Comments of CTIA, ET Docket No. 17-215, at 2-3 (filed Oct. 30, 2017) (“CTIA 2017 OET Comments”); Comments of Sprint Nextel Corporation, WT Docket No. 10-112, at 19-20 (filed Aug. 6, 2010) (“Sprint 2010 WRS Comments”); Comments of AT&T Inc., WT Docket No. 10-112, at 33-34 (filed Aug. 6, 2010) (“AT&T 2010 WRS Comments”).

⁴⁵ NPRM ¶ 28.

and the need to maintain up-to-date information in ULS.⁴⁶ Those burdens can deter licensees from engaging in secondary market transactions at the outset. Assuring licensees that they may reaggregate their licenses—and that their administrative burdens will be reduced when doing so—if and when the whole license is once again held by the licensee will encourage licensees to lease or sell spectrum in the first instance, thus meeting the dual goals of increasing the availability of advanced telecommunications services in rural areas and facilitating access to spectrum by small carriers.

Importantly, as discussed below, the Commission need not adopt a rule to effectuate this result. The Commission has appropriately recognized that spectrum reaggregation may be implemented by Commission staff as a procedural matter, explaining that “[t]he question of whether, and how, a partitioned or disaggregated license can be reconstituted as a matter or processing can be addressed by Commission staff under current rules and licensing systems.”⁴⁷ For instance, Sprint recently used existing *pro forma* assignment processes to reconsolidate a partitioned spectrum area with the underlying license from which it came.⁴⁸ AT&T has similarly

⁴⁶ *Id.*

⁴⁷ *2017 WRS Order*, 32 FCC Rcd at 8907 ¶ 88.

⁴⁸ *See, e.g.*, Nextel Communications of the Mid-Atlantic, Inc., Description of *Pro Forma* Assignment and Public Interest Statement, ULS File No. 0008063765, at 1 (filed Jan. 16, 2018) (explaining that the purpose of the assignment is to allow a wholly-owned subsidiary of Sprint Corporation “to reconsolidate the small partitioned spectrum area licensed under WPQT200 with the underlying license—WPLM552—from which it originally came”); *see also* Nextel WIP License Corp., ULS File No. 0000493992 (filed June 18, 2001); Nextel WIP License Corp., ULS File No. 0000493991 (filed June 18, 2001); Nextel WIP License Corp., ULS File No. 0000493987 (filed June 18, 2001); Nextel WIP License Corp., ULS File No. 0000493981 (filed June 18, 2001); Nextel WIP License Corp., ULS File No. 0000493896 (filed June 18, 2001).

submitted applications for *pro forma* assignments to reconsolidate various licenses that were partitioned and disaggregated.⁴⁹

Not only would allowing the consolidation of previously partitioned and/or disaggregated spectrum encourage secondary market transactions, but it would also reduce costs and burdens on licensees, the Commission, and the public associated with tracking and managing multiple licenses.⁵⁰ This is particularly true for licensees that may have thousands of licenses to monitor and track.⁵¹

Contrary to the Commission's assertion, allowing spectrum reaggregation would not result in the avoidance of construction requirements or "laundering" of regulatory obligations.⁵² The Commission addressed the "laundering" of construction requirements in its *2017 WRS Order*. In that proceeding, the Commission explained that a licensee could avoid its obligations by disaggregating a small sliver of its license and assigning the buildout requirement for the *entire* license to a third-party licensee.⁵³ The Commission therefore adopted unified buildout requirements for spectrum that is partitioned or disaggregated so that parties to a transaction are

⁴⁹ See, e.g., Orange Licenses Holdings, LLC, Description of *Pro Forma* Assignment and Public Interest Statement, ULS File No. 0002390689 (filed Nov. 25, 2005) (requesting Commission consent for the assignment of various PCS licenses to wholly-owned subsidiaries of Cingular Wireless LLC so that they may be reconsolidated with the underlying licenses); see also New Cingular Wireless PCS, LLC, Description of *Pro Forma* Assignment and Public Interest Statement, ULS File No. 0002434076 (filed Jan. 5, 2006).

⁵⁰ See CTIA 2017 OET Comments at 3; AT&T 2010 WRS Comments at 34.

⁵¹ See, e.g., Sprint 2010 WRS Comments at 20.

⁵² See *NPRM* ¶ 29.

⁵³ See *2017 WRS Order*, 32 FCC Rcd at 8903-04 ¶ 78 & n.197 (adding that in such circumstances only the small sliver of spectrum was subject to license termination or forfeiture while the bulk of the license was not subject to any construction requirements).

either individually or jointly held accountable for buildout requirements, thereby eliminating the ability for parties to “game” their obligations.⁵⁴

Allowing a licensee to reaggregate its spectrum would *not* change that result. Indeed, reaggregation of a license would result in only *one* license with *one* overall buildout obligation spread across the originally authorized license—*i.e.*, the licensee’s coverage requirements would be the same as if it had never partitioned or disaggregated its license in the first place. As noted above, this is consistent with the Commission’s objective to ensure that the *original* buildout requirements are met.⁵⁵ If the Commission had instead intended only for each piece of a partitioned or disaggregated license to meet a separate buildout requirement, it would not have provided licensees the option for each entity to meet its own performance obligation. Moreover, if reaggregation occurs after performance requirements are satisfied, then any concerns regarding gaming the system will be eliminated.

CTIA recognizes that additional Commission resources may be necessary to process reaggregation applications.⁵⁶ However, resource efficiencies would be gained *after* licenses have been reaggregated, including in fewer buildout, renewal, and continuity of service showings for consolidated licenses. Moreover, additional administrative efficiencies could be achieved if the Commission adopts the technical revisions that CTIA proposes below.

⁵⁴ See *id.* at 8902-04 ¶¶ 74-80; *NPRM* ¶ 4. Because these requirements contain new or modified information collection requirements, they require review and approval by the Office of Management and Budget, which is currently pending.

⁵⁵ See *2017 WRS Order*, 32 FCC Rcd at 8904 ¶ 80.

⁵⁶ See *NPRM* ¶ 30.

V. THE COMMISSION SHOULD UPGRADE ITS IT INFRASTRUCTURE AND ENSURE THAT LICENSEE INFORMATION IS ROBUST AND TRANSPARENT TO FURTHER FACILITATE SECONDARY MARKET TRANSACTIONS.

The Commission seeks comment on whether, in addition to substantive barriers, there are procedural barriers to partitioning or disaggregation that limit the utility of those programs for covered small carriers.⁵⁷ The Commission also asks whether there are procedural barriers to leasing that inefficiently limit the use of the program by spectrum licensees.⁵⁸

In addition to the substantive barriers discussed above, the Commission's technical capabilities and IT infrastructure are antiquated and often hinder a licensee's ability to enter into secondary market transactions, let alone comply with the Commission's rules in an efficient manner. Commissioner O'Rielly has recognized this concern, emphasizing recently that software development has prevented the Commission from scheduling auctions in a timely manner.⁵⁹ The Commission should not allow technical limitations to prevent the implementation of its policy decisions. Instead, it should perform much-needed updates to its online databases and forms to remove any technical impediments, particularly those that could discourage parties from entering into partitioning, disaggregation, and spectrum leasing arrangements.

A. The Commission Should Ensure that Its Forms Have the Technical Capabilities to Allow Parties to Engage in Secondary Market Transactions and Comply with the Commission's Rules.

As CTIA suggests above, the Commission should streamline the approval processes for simple block-for-block spectrum swaps. In addition, as a part of this process, the Commission

⁵⁷ See *id.* ¶ 21.

⁵⁸ See *id.* ¶ 25.

⁵⁹ Michael O'Rielly, Commissioner, Federal Communications Commission, Remarks at the Brooklyn 5G Summit 2019, at 3 (Apr. 25, 2019), <https://docs.fcc.gov/public/attachments/DOC-357184A1.pdf>; Michael O'Rielly, Commissioner, Federal Communications Commission, Remarks before the CBRS Alliance, Charlotte, NC, at 3 (Apr. 30, 2019), <https://docs.fcc.gov/public/attachments/DOC-357255A1.pdf>.

should update FCC Form 603—the form for assignments and transfers of control—so that parties engaged in these transactions can easily identify them for immediate processing by the Commission. The Commission could, for instance, allow applicants to indicate using a checkbox that they are engaged in block-for-block spectrum swaps and thus qualify for streamlined processing of their applications. As AT&T has explained, the Commission should update its forms to ensure that all applications that comply with the immediate processing requirements in fact receive immediate processing.⁶⁰

The Commission should also ensure that FCC Form 608—the form for leasing arrangements—and related filings may be submitted electronically and enable licensees to comply with the Commission’s rules. First, the Commission should ensure that subleases may be submitted electronically. While the Commission’s rules indicate that FCC Form 608 *must* be submitted electronically in some instances and *may* be submitted electronically in other instances,⁶¹ Commission practice has required manual filings in certain cases, including for subleases.⁶² Requiring manual filings is an outdated and inefficient practice that can unnecessarily delay the deployment of new services. Allowing the electronic submission of subleases would not only eliminate unnecessary paperwork requirements for licensees and lessors, but it would also reduce processing delays and ease administrative burdens for Commission staff, ensuring that parties to such transactions promptly deploy their operations.

Second, the Commission should update its FCC Form 608 so that interested parties can use it to assign their leases and convert their short-term leases to long-term leases. The

⁶⁰ See AT&T 2018 Biennial Review Reply Comments at 5.

⁶¹ See 47 C.F.R. §§ 1.9003, 1.913(d).

⁶² See Verizon 2018 Biennial Review Comments at 7; T-Mobile 2018 Biennial Review Reply Comments at 4; AT&T 2018 Biennial Review Reply Comments at 8.

Commission's rules currently allow parties to engage in both types of leasing arrangements, but FCC Form 608 does not include the functionality to allow them to do so. Consequently, lessors and lessees end up performing inefficient workarounds that often require multiple filings where a single filing theoretically would suffice, or submitting a manual filing.⁶³ Implementing functionality that would permit the conversion of a short-term lease to a long-term lease, the assignment of leasing arrangements, or any other task that may be required or contemplated by the rules but missing in FCC Form 608, would reduce confusion and eliminate the inefficient, interim workarounds that providers must utilize.

Third, the Commission should allow spectrum manager lessees to use FCC Form 608 to make necessary filings that do not require involvement or action by the lessor and do not affect the underlying license.⁶⁴ These filings should include, but should not be limited to, administrative updates, notifications of *pro forma* transfers of control affecting the lessee, and necessary compliance filings. Alternatively, the Commission should amend its rules to clarify that spectrum manager lessors are required to act in good faith to assist lessees with any required filings and that lessees will not be responsible for any rule violations that arise from the lessor's failure to cooperate in good faith. As AT&T has explained, adopting either of these approaches would limit the opportunity for licensees to *prevent* lessees from complying with applicable laws

⁶³ See AT&T 2018 Biennial Review Reply Comments at 7-8 (explaining that the only way for parties to convert a short-term *de facto* transfer lease to a long-term *de facto* transfer lease is to "file an application for a new long-term lease (even though the lease in question is not 'new') and then, when the new lease application is granted, cancel the old lease").

⁶⁴ See *id.* at 8 (noting that licensees are required to make filings on behalf of spectrum manager lessees, even if only to correct typos and even though the lessee could face regulatory consequences if the licensee does not submit the required filings in a timely manner, because ULS does not currently allow lessees to make *any* electronic filings related to their leases lest *de facto* control of the license shifts to the lessee).

and/or rules, while ensuring that *de jure* or *de facto* control of the leased spectrum does not pass to the lessee in contravention of the Commission's rules and policies.⁶⁵

Finally, for both FCC Forms 603 and 608, the Commission should ensure—through the addition or elimination of certain questions on the forms—that applications eligible for overnight processing actually receive overnight processing.

B. The Commission Should Establish a Mechanism By Which Licensees Can Easily Reaggregate Their Spectrum Holdings.

As discussed above, CTIA supports allowing the reaggregation of licenses that have been partitioned or disaggregated. Allowing reaggregation creates greater incentives for licensees to engage in secondary market transactions and can be implemented without any changes to the Commission's rules. While, as noted above, current Commission processes have permitted licensees to reaggregate their spectrum holdings, those processes vary and have been applied inconsistently. Consequently, staff review of applications to reaggregate licenses often takes a substantial amount of time. Rather than maintain an *ad hoc* approach to reaggregation, the Commission should adopt a simple, uniform process by which licensees can easily and quickly notify Commission staff that a licensee has reaggregated its license.

C. The Commission Should Facilitate License Information Transparency, Consistent with Existing Information Collections.

Finally, to further facilitate secondary market activity, small carriers and carriers seeking to serve rural areas should be able to more readily ascertain from the Commission information about licenses and spectrum holdings. National and regional wireless service providers remain committed to providing spectrum resources to small and rural carriers. Nevertheless, it is often unclear from ULS where such providers hold spectrum. Small and rural carriers in particular

⁶⁵ See *id.* at 8.

may lack the resources and expertise to extract the information they need from the Commission’s database. The Commission should therefore consider, as it continues to modernize ULS, ways to make licensing information already available in its database more accessible to small and rural carriers. As Commissioner Rosenworcel has noted, partitioning, disaggregation, and leasing will work better if “secondary markets can operate with full information.”⁶⁶

CTIA emphasizes that the Commission, in making license information more transparent to the public, need not create a new database. The Commission could, for instance, simply revive the Spectrum Dashboard that was created as a result of the 2010 National Broadband Plan.⁶⁷ Recognizing that the Commission’s rules often contain technical language and terms of art that may be difficult for the general public to understand, the Commission created the Spectrum Dashboard as a “one-stop shopping” portal for licensing information by combining the information currently available on separate electronic databases and filing systems into one dashboard.⁶⁸ It displayed that licensing information to the public in plain language and employed a user-friendly mechanism for interested parties to browse licenses by licensee name, spectrum band, and geographic area.

Whatever mechanism it utilizes, the Commission should *not* require any additional information from licensees. The Commission need only ensure that the information available in the dashboard relates directly to the information that is already available in ULS and is updated

⁶⁶ *NPRM* at Statement of Commissioner Jessica Rosenworcel.

⁶⁷ Spectrum Dashboard, FCC, <http://reboot.fcc.gov/reform/systems/spectrum-dashboard> (last visited May 22, 2019) (stating that the Spectrum Dashboard generally has not been updated since July 7, 2014); Federal Communications Commission, *Connecting America: The National Broadband Plan* (2010).

⁶⁸ Mary Bucher, *Welcome to the Spectrum Dashboard*, FCC BLOG (Mar. 19, 2010), <https://www.fcc.gov/news-events/blog/2010/03/18/welcome-spectrum-dashboard> (“The initial version we release today provides plain language information of mobile broadband service frequencies between 225 MHz and 3.7 GHz. In addition, the Spectrum Dashboard contains enhanced search, mapping and data download capabilities for licenses in those broadband service bands.”).

frequently so that it remains accurate and robust. In addition, the Commission should ensure that any updates made to the dashboard are performed automatically in order to avoid any errors or delays associated with manual updates.

VI. CONCLUSION.

CTIA welcomes the Commission's evaluation of how its secondary market policies can increase deployment in rural areas and facilitate the ability of small carriers to access spectrum resources. While the Commission's current rules and policies have fostered an active secondary market, the Commission can further streamline its processes, reduce substantive and procedural barriers, and update its IT architecture to encourage even greater access to spectrum by small and rural carriers.

Respectfully submitted,

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