

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

In the Matter of

Petition for Rulemaking and Declaratory )  
Ruling to Streamline Federal )  
Communications Commission )  
Processes Regarding Non-Substantial )  
Assignments of Licenses and Transfers )  
of Control )

File No. RM- \_\_\_\_\_

**PETITION FOR RULEMAKING AND DECLARATORY RULING**

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## SUMMARY

*Pro forma* transfers of control and assignments involve routine, non-substantial changes in the ownership of Federal Communications Commission (“Commission”) licenses where ultimate control of the licenses does not change. *Pro forma* transactions occur in a variety of circumstances, such as a company assigning an authorization from one wholly-owned subsidiary to another, or a company in the ownership chain of a Commission licensee changing its corporate form (e.g., from a corporation to a limited liability company). These transfers of control or assignments are administrative in nature or relate to internal corporate organizations; by definition they do not change the entity that is the ultimate parent or owner that controls the license. The Commission has repeatedly stated that these transactions are presumptively in the public interest and has previously taken some steps to reduce administrative burdens associated with the mandatory Commission filings that are needed to complete them.

Today, however, there remains a patchwork of similar but not identical requirements, procedures, and deadlines that vary by license type and reviewing Commission bureau. A single non-substantial internal transaction can require a Commission licensee to file dozens or even hundreds of notifications for the same event. These filings can be numerous and complex, administratively burdensome, and do not further the public interest. They can strain resources for license holders who often have very few licenses, such as those used for two-way radio and other limited, internal communications. Those license transactions also could delay business decisions and divert sparse resources all to comply with onerous and unnecessary *pro forma* filing and review procedures. Licensees are not the only entities affected; *pro forma* transactions are substantially burdensome for Commission staff as well. Over the past decade, for example,

Wireless Telecommunications Bureau staff have processed over 600 *pro forma* applications per year on average.

The Commission has taken a number of actions to streamline its *pro forma* procedures over the years precisely to address these types of unnecessary burdens. While these reforms have gone a long way to remove regulatory underbrush, there is more to be done. In this Petition, CTIA and USTelecom identify specific, common-sense reforms that the Commission can and should take in a rulemaking proceeding and/or by issuing a declaratory ruling to streamline its procedures regarding *pro forma* transactions and remove unnecessary burdens from licensees and staff alike.

First, the Commission should amend its rules to eliminate prior approval filing requirements for all *pro forma* transfer and assignment applications involving Commission licensees and should instead allow such licensees to report *pro forma* transactions via post-closing notifications. The Commission already applies this streamlined treatment to many types of licenses used for a wide variety of radio services. Applying post-closing notification procedures to all license types will provide clarity, promote compliance, and reduce processing burdens. If the Commission decides not to eliminate the prior approval requirements for *pro forma* transactions, the Commission should instead revise its rules to provide that all *pro forma* applications involving licenses that are not deemed eligible for post-closing notification are (except where otherwise prohibited by rule) automatically granted upon filing or granted via immediate/overnight approval procedures. In addition, the Commission should issue a declaratory ruling to provide greater certainty regarding which licenses qualify for post-closing notification procedures.

Next, the Commission should issue a declaratory ruling to clarify that certain non-substantial changes in ownership do not amount to a reportable transfer of control. In particular, the Commission should extend to all services the approach for the Cable Television Relay Service (“CARS”), which does not require approval or filing for ownership changes that neither change the licensee’s identity nor its ultimate controlling ownership. The Commission also should clarify that a licensee planning to change its organizational form (for example, from a corporation to a limited liability company), is not automatically required to make a *pro forma* filing for a change in control.

Finally, the Commission should reduce administrative burdens on licensees and Commission staff by streamlining certain of its application forms and making certain changes to its electronic application filing procedures. Such procedural changes would merely allow licensees to do what the rules require, without having to use confusing workarounds or making duplicative filings.

Consistent with the Commission’s efforts to eliminate unnecessary regulation, the reforms proposed in this Petition will serve the public interest by providing greater certainty regarding the Commission’s rules regarding *pro forma* transactions, greatly reduce administrative burdens and unnecessary delays and costs on licensees, and promote efficient use of Commission and licensee resources.

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**PETITION FOR RULEMAKING AND DECLARATORY RULING**

In this Petition, CTIA<sup>1</sup> and USTelecom<sup>2</sup> (together, “the Associations”) respectfully request that the Commission initiate a targeted rulemaking pursuant to Section 1.401 of its rules<sup>3</sup> and issue a declaratory ruling pursuant to Section 1.2 of its rules<sup>4</sup> to streamline and reduce unnecessary burdens associated with *pro forma* assignments and transfers of control of Commission licenses. Specifically, CTIA and USTelecom request that the Commission apply streamlined, post-closing notification procedures to all *pro forma* transactions, clarify which licenses are eligible for streamlined processing, clarify that no *pro forma* filings are required for

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://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.

<sup>2</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

<sup>3</sup> 47 C.F.R. § 1.401.

<sup>4</sup> 47 C.F.R. § 1.2.

certain non-substantial transactions, and update certain forms and procedures to facilitate electronic filings and remove unnecessary procedures. Adopting these common-sense reforms will reduce administrative burdens, promote more efficient use of resources, and build on the Commission's successful efforts to remove unnecessary regulations.

## I. INTRODUCTION

*Pro forma* transactions are non-substantial transactions that do not change ultimate control of a Commission license or authorization.<sup>5</sup> They are not mergers between two unaffiliated entities, nor are they transfers of obligations between unaffiliated companies. Instead, they are routine corporate transactions such as converting an entity's corporate form or moving an intermediate holding company or subsidiary within a commonly-owned and controlled organization. Accordingly, they do not have competitive implications or other consumer-facing effects, and the Commission has classified them as presumptively in the public interest.<sup>6</sup> To the Associations' knowledge, the Commission has never refused to consent to a *pro forma* transaction.<sup>7</sup> Over the years, the Commission has taken many actions to remove

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<sup>5</sup> 47 C.F.R. §§ 1.767, 1.948(c)(1), 63.24(d).

<sup>6</sup> See, e.g., *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 Telecomms. Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6295, ¶ 2 (1998) ("FCBA Wireless Order"); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, ¶ 50 (2002) ("Domestic Section 214 Streamlining Order") ("We conclude that *pro forma* transactions in general have no impact, or a *de minimis* impact, on the public interest, because the same interstate services will be offered to the same customers following the transfer of lines."); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713, 14809, ¶ 303 (2015) ("Satellite Streamlining Order") ("We conclude that such *pro forma* assignments and transfers do not raise public interest concerns and that we should, therefore, cease requiring licensees to obtain prior Commission approval of such transactions. We also conclude that eliminating the requirement for prior approval would promote competitive market conditions by allowing licensees to change their ownership structure or internal organization as business needs require without undue regulatory burdens.").

<sup>7</sup> As explained below, the Commission does have the discretion to make a finding that a transaction characterized by the applicants as *pro forma* is in fact a substantive, non-*pro forma* transfer of control. In the realm of properly-characterized transactions, however, the Associations are not aware of any Commission action to block a *pro forma* transaction.

burdensome requirements and make its rules more consistent across bureaus, and across license types.<sup>8</sup> Despite these efforts, complicated rules still remain on the books regarding *pro forma* transaction procedures.

In the three years since Chairman Pai first promised to “fire up the weed whacker” to remove the thick regulatory underbrush that has accumulated at the agency, the Commission has made great strides toward carrying out this deregulatory agenda.<sup>9</sup> The Commission’s work in this regard has advanced the public interest by freeing up resources to allow CTIA and USTelecom member companies to better manage their businesses and serve their customers, while also allowing the Commission to re-direct its own resources to better serve the public. But the Commission’s work is not done. The Commission should adopt the proposals in this Petition to simplify and streamline *pro forma* filing obligations, reduce confusion, and remove unnecessary burdens associated with the procedures required for non-substantive assignments and transfers of control.

Under Section 310(d) of the Communications Act of 1934, as amended (the “Act”), any assignment of a radio station license or transfer of control of a radio station licensee shall not take place except upon application to the Commission, and upon a finding by the Commission

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<sup>8</sup> See, e.g., *2000 Biennial Review, Amendment of Parts 43 and 63 of the Commission’s Rules*, Report and Order, 17 FCC Rcd 11416, ¶ 5 (2002) (“*International Section 214 Streamlining Order*”) (“Because an increasing number of transactions involve authorizations for several different services and therefore require review by multiple Bureaus and Offices within the Commission, it will ease the burden on applicants if we better harmonize our rules for assignments and transfers of control applicable to international services with similar rules for other telecommunications services.”).

<sup>9</sup> See Remarks of FCC Commissioners Ajit Pai Before the Free State Foundation’ Tenth Anniversary Gala Luncheon, Dec. 7, 2016 (“In the months to come, we also need to remove outdated and unnecessary regulations. As anyone who has attempted to take a quick spin through Part 47 of the Code of Federal Regulations could tell you, the regulatory underbrush at the FCC is thick. We need to fire up the weed whacker and remove those rules that are holding back investment, innovation, and job creation.”).



that the public interest, convenience, and necessity will be served by the transaction.<sup>10</sup> The Commission has adopted a comparable public interest standard and filing requirement for the assignment and transfer of control of authorizations not subject to Section 310(d), specifically, Section 214 authorizations<sup>11</sup> and submarine cable landing licenses.<sup>12</sup>

The Commission distinguishes between transfers of control and assignments that involve a “substantial change in ownership or control” and those that do not.<sup>13</sup> The latter are referred to as *pro forma* transactions.<sup>14</sup> These *pro forma* transactions take place in the normal conduct of a licensee’s business for a variety of reasons. The Commission has long presumed that *pro forma* transactions are in the public interest and therefore require less rigorous review than those with substantial changes in ownership or control.<sup>15</sup>

Over the decades, the Commission has adopted various procedures to apply a more streamlined filing and approval process related to *pro forma* license assignments and transfers of control for a multitude of services covered by the Act. Examples abound. For broadcast services, the Commission has long provided that *pro forma* assignments and transfers of control are eligible for a more streamlined process and may be filed on the simpler Form 316, as

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<sup>10</sup> 47 U.S.C. § 310(d).

<sup>11</sup> 47 C.F.R. §§ 63.04, 63.24.

<sup>12</sup> *Id.* § 1.767.

<sup>13</sup> *See, e.g., id.* §§ 1.767, 1.948(c)(1), 63.24(c), 73.3540(f).

<sup>14</sup> *See, e.g., id.* §§ 1.767, 1.948(c)(1), 63.24(d).

<sup>15</sup> *See, e.g., FCBA Wireless Order*, 13 FCC Rcd at 6295, ¶ 2; *1998 Biennial Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909, ¶ 42 (1999) (“Regulatory review of [*pro forma*] transactions yields no significant public interest benefits, but may delay or hinder transactions that could provide substantial financial, operational, or administrative benefits for carriers.”).

opposed to Form 315.<sup>16</sup> These procedures have been in place for over 70 years.<sup>17</sup> Similarly, in 1985, the Commission simplified the process for filing license assignment and transfer of control applications for stations in the CARS. Specifically, it eliminated filing requirements “where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee” (e.g., transactions involving changes to intermediate owners only, such as the insertion of a new wholly-owned holding company).<sup>18</sup>

The Commission undertook a broader initiative to streamline *pro forma* transaction procedures in 1998 when it granted a Petition for Forbearance filed by the Federal Communications Bar Association (“FCBA”) and concluded that prior approval of applications for consent to *pro forma* transfers of control and assignments for certain wireless licenses were not necessary.<sup>19</sup> Specifically, the Commission decided to forbear from Section 310(d) requirements for *pro forma* transactions involving common carrier radio station licenses held by telecommunications carriers. The Commission only required licensees holding eligible licenses to notify the Commission of a *pro forma* transfer of control or assignment within 30 days after the effective date of the *pro forma* transaction, rather than obtain prior approval. The Commission recognized that post-closing notification procedures for a large class of *pro forma*

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<sup>16</sup> 47 C.F.R. § 73.540(f).

<sup>17</sup> See, e.g., *In re Application of Burbank Broadcasters, Inc. (Assignor), Leslie S. Bowden, Trustee in Bankruptcy (Assignee), for Assignment of License of Standard Broadcast Station KWIK and Construction Permit for FM Station KWIK-FM; In re Application of Burbank Broadcasters, Inc. for Construction Permit to Replace Expired Permit of KWIK-FM*, Memorandum Opinion and Order, 14 FCC 378 (1949) (describing Commission procedure allowing *pro forma* assignment to be requested on a FCC Form 316 (short form)).

<sup>18</sup> *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, 1140, ¶ 12 (1985).

<sup>19</sup> *FCBA Wireless Order*, 13 FCC Rcd at 6306-09, ¶¶ 23-28.

transactions would meaningfully reduce administrative burdens for eligible licenses and promote efficiency and competition.

The Commission has continued to expand the applicability of its streamlined *pro forma* procedures to other license and authorization types. In 2001, the Commission permitted similar post-closing notifications in the case of the *pro forma* assignment or transfer of control of submarine cable landing licenses.<sup>20</sup> In 2002, the Commission revised its rules so it no longer required prior approval of the *pro forma* assignment or transfer of control of international Section 214 authorizations.<sup>21</sup> In doing so, the Commission explicitly noted that it was doing so “to be more consistent with those procedures used for other service authorizations, particularly CMRS.”<sup>22</sup> Additionally, the Commission eliminated the vast majority of filing requirements for *pro forma* assignments or transfers of control of domestic Section 214 authorizations in lieu of a “no notice required” policy, which requires no notice or approval of *pro forma* transactions (except in the certain circumstances involving bankruptcy).<sup>23</sup> In 2015, the Commission partially eliminated its requirement that prior approval be obtained for the *pro forma* assignment or

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<sup>20</sup> These simplified procedures apply to all newly-issued submarine cable landing licenses, as well as any legacy submarine cable license that underwent a Commission-prescribed modification process. *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, 22199-201, ¶¶ 61-65 (2001) (“*Submarine Cable Streamlining Order*”) (“By their nature, *pro forma* transactions do not result in a change in the ultimate control of the interest in the cable landing license or in changes to the cable system itself as previously evaluated at the time of the initial license application. Therefore, we adopt herein a new process designed to remove prior review of *pro forma* transactions.”).

<sup>21</sup> *International Section 214 Streamlining Order*, 17 FCC Rcd at 11418, ¶ 4.

<sup>22</sup> *Id.* at 11418, ¶ 4; *see also id.* at 11419, ¶ 5 (“Because an increasing number of transactions involve authorizations for several different services and therefore require review by multiple Bureaus and Offices within the Commission, it will ease the burden on applicants if we better harmonize our rules for assignments and transfers of control applicable to international services with similar rules for other telecommunications services.”).

<sup>23</sup> *Domestic Section 214 Streamlining Order*, 17 FCC Rcd at ¶¶ 50-54 (“We decline to adopt commenters’ suggestions that we require applicants to file post-consummation notices of *pro forma* transactions. Since the Commission currently employs other means to track and contact carriers, we conclude that imposing our own requirement would be duplicative and would only increase rather than reduce reporting burdens. Thus, no post-transaction notification will be required for most transactions.”).

transfer of control of satellite space and earth station licenses.<sup>24</sup> Instead, the Commission applied the 30-day post-closing notice requirement (already applicable to CMRS licenses and international Section 214 authorizations) to *pro forma* transactions involving common carrier satellite and earth station licenses and stated that *pro forma* applications involving non-common carrier licenses would be “deemed granted” one business day after filing.<sup>25</sup> The Commission also eliminated the requirement to provide notice of *pro forma* transfers of control of receive-only earth station registrations.<sup>26</sup>

While the above history shows the great strides the Commission has made to simplify and streamline filing processes for *pro forma* assignments and transfers of control, there remain considerable administrative challenges associated with them. For example, it is not always clear which wireless authorizations are eligible for post-closing notification and which are not. Although the Commission provided some guidance in the *FCBA Wireless Order*,<sup>27</sup> more than 20 years have passed since then, and the Commission has adopted many new rule parts and radio services without explaining whether licensees in these services may use post-closing notification procedures for *pro forma* transactions.

As a consequence, Commission licensees holding multiple types of authorizations must navigate a patchwork of similar but not identical requirements, procedures, and deadlines, which creates confusion and increases the risk of inadvertent non-compliance. Licensees engaged in a

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<sup>24</sup> *Satellite Streamlining Order*, 30 FCC Rcd at 14808-09, ¶¶ 300-01 (“We conclude that prior approval of applications for consent to *pro forma* transfers and assignments of space and earth station licenses is not necessary to ensure that licensees’ charges, practices, classifications, and services are just and reasonable, and not unjustly or unreasonably discriminatory.”).

<sup>25</sup> *Id.* at 14809, ¶¶ 304-05.

<sup>26</sup> *Id.* at 14810, ¶ 306 (“While notifications of *pro forma* assignment of such registrations are necessary to update the Commission’s records as to the current registrant, we do not believe that notification of *pro forma* transfers of control, reflecting minor ownership changes where the registrant remains the same, is necessary.”).

<sup>27</sup> See *FCBA Wireless Order*, 13 FCC Rcd at 6306-07, ¶ 24.

*pro forma* transaction often must submit duplicative filings seeking prior approval for some licenses and post-closing notifications for other licenses.

For companies with complex ownership structures and numerous licensee subsidiaries, even entirely non-substantive or intermediate ownership changes and modifications can trigger a requirement to make hundreds of filings. The legal expenses associated with these filings are often high, and the Commission itself must devote considerable time and resources to process them. In addition, licensees that may be confused by the various requirements for different license types and seek help from Commission staff would benefit from consistent guidance from all staff.

The public interest is served by eliminating or modifying outdated, unnecessary, and unduly burdensome regulation that stands in the way of competition and innovation.<sup>28</sup> By adopting the proposed rule and policy changes described below, the Commission can provide certainty regarding the application of its rules, greatly reduce administrative burdens and costs on licensees, and make more efficient use of Commission resources. As Chairman Pai has recognized, the Commission must “harness the power of free markets and make sure unnecessary regulations don’t hold back investment and American ingenuity.”<sup>29</sup>

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<sup>28</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017); Remarks of FCC Chairman Ajit Pai at the National Association of Broadcasters Show (Apr. 9, 2019) (“I launched a review of the Commission’s media rules in order to revise or repeal rules that are outdated, unnecessary, or unduly burdensome. Since beginning this process, the Commission has opened 14 proceedings, and we’ve issued a total of 11 orders. And we’re not done yet.”); *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 33 FCC Rcd 11549 (2018) (eliminating “unnecessary and outdated [hearing aid compatibility] reporting requirements and replac[ing] them with a streamlined annual certification”); *Reform of Certain Part 61 Tariff Rules*, Report and Order, WC Docket Nos. 18-276, 17-308, FCC 19-107 (rel. Oct. 30, 2019) (amending the tariff rules to minimize burdens and reduce unnecessary regulations that no longer serve the public interest).

<sup>29</sup> Remarks of FCC Chairman Ajit Pai at the 7<sup>th</sup> Annual Americas Spectrum Management Conference (Oct. 3, 2018).

## II. THE COMMISSION SHOULD STREAMLINE AND MAKE CONSISTENT ITS *PRO FORMA* FILING REQUIREMENTS

The Commission should initiate a targeted rulemaking to apply a simplified post-closing notification with streamlined filing requirements to all *pro forma* transactions. As described above, the Commission has worked for years to reduce burdens associated with *pro forma* transactions for licensees of many types. The Commission recognizes that because *pro forma* transactions do not change the ultimate owner who controls a Commission license or authorization, less burdensome review processes are necessary.<sup>30</sup> Indeed, “[b]ecause *pro forma* transactions do not affect actual control of the licensee, they are unlikely to have any impact on the licensees’ charges, practices, classifications, or services,” and thus it “has not been necessary to consider these issues in [the Commission’s] review of *pro forma* transactions.”<sup>31</sup>

The Commission should adopt the targeted changes CTIA and USTelecom propose to streamline and align the filing obligations for all *pro forma* transactions. By doing so, the Commission can continue to execute the Chairman’s good government practices of rolling back regulatory red tape so that both licensees and the Commission can dedicate their resources to promoting efficiency and competition in the telecommunications marketplace.<sup>32</sup>

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<sup>30</sup> See, e.g., *FCBA Wireless Order*, 13 FCC Rcd at 6295, ¶ 2 (“[T]here is no need for additional public interest review of [a *pro forma*] application, because the person or entity retaining ultimate control of the license was subject to prior public interest review and approval by the Commission when it was originally awarded the license (whether by initial licensing or by a previous transfer or assignment). Therefore, where no substantial change of control will result from the transfer or assignment, grant of the application is deemed presumptively in the public interest.”).

<sup>31</sup> *Satellite Streamlining Order*, 30 FCC Rcd at 14809, ¶ 301.

<sup>32</sup> See, e.g., *id.* at 14809, ¶ 303 (“[E]liminating the requirement for prior approval would promote competitive market conditions by allowing licensees to change their ownership structure or internal organization as business needs require without undue regulatory burdens.”).

**A. All *Pro Forma* Transfers and Assignments of Wireless and Satellite Licenses Should Qualify for Post-Closing Notification**

The Commission has authority to allow all *pro forma* transactions to use post-notification procedures rather than prior approval procedures. Under Section 310(d) of the Act, any assignment of a radio station license or transfer of control of a radio station licensee shall not take place except upon application to the Commission, and upon a finding by the Commission that the public interest, convenience, and necessity will be served by the transaction.<sup>33</sup> In short, all Section 310(d) requires is: i) an application to the Commission and ii) a finding that the transaction is in the public interest. The Commission could reasonably determine that a post-closing *pro forma* assignment or transfer of control notification qualifies as an “application” under Section 310(d). With regard to the second prong, as noted above, the Commission has repeatedly stated that *pro forma* transactions are presumptively in the public interest, thus satisfying the requirement automatically.

The Commission should solidify this presumption by revising its rules through a rulemaking proceeding to provide that except where specifically provided otherwise, *pro forma* transactions are, by definition, in the public interest.<sup>34</sup> Specifically, the Commission should amend Section 1.948 of its rules and other relevant rule sections to state that *pro forma* transactions are automatically deemed to be in the public interest.<sup>35</sup> The Commission should also amend the rules such that licensees conducting *pro forma* transactions may file a notification with the Commission within 30 days after closing, regardless of license type. The Commission

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<sup>33</sup> 47 U.S.C. § 310(d).

<sup>34</sup> *See, e.g.*, 47 C.F.R. §§ 1.948, 5.79, 25.119. Transactions that would fall outside this presumption may include transactions involving designated entities and proxy contests, among others.

<sup>35</sup> 47 C.F.R. § 1.948.

should also amend Section 5.79 of its rules to allow for post-closing notification of *pro forma* transactions involving experimental licenses, as well as applicable Part 25 rules for satellite licenses.<sup>36</sup> As safeguards to help ensure that these proposed rule changes only apply to what in fact are purely *pro forma* transactions, existing Commission rules and procedures allow both the third parties and the Commission to challenge those applications.<sup>37</sup> If it were to be necessary, third parties have the option to challenge a post-closing notification on the basis that the transaction is not actually *pro forma*. For third parties, those challenges would have the same effect as a Petition to Deny and/or Petition for Reconsideration submitted against applications for prior Commission approval.

Eliminating the prior application requirement for *pro forma* transactions would not undermine the Commission's authority to review a transaction, or otherwise eliminate its ability to determine whether a transaction is properly classified as *pro forma*. Indeed, the Commission has repeatedly stated that it:

retains the authority to determine that a particular transaction characterized by the applicants as *pro forma* is, in fact, a substantial change of control and therefore should be subject to the appropriate review. In such case, the Commission will rescind the grant of the purported *pro forma* assignment or transfer of control.<sup>38</sup>

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<sup>36</sup> *Id.* §§ 5.79, 25.119.

<sup>37</sup> *See, e.g., id.* §§ 1.106, 1.107 (preserving the right for third parties to seek reconsideration of Commission actions, and the ability of the Commission to reconsider actions on its own motion).

<sup>38</sup> *International Section 214 Streamlining Order*, 17 FCC Rcd at 11421, ¶ 10. *See, e.g., FCBA Wireless Order*, 13 FCC Rcd at 6304, ¶ 19 (“We further conclude that requiring prior review of hundreds of routine applications a year is not needed to protect against the rare instance in which an applicant may file a *pro forma* application that should be treated as non-*pro forma*. . . . [I]nterested parties will have an opportunity to challenge and seek reconsideration of any *pro forma* transaction granted by notification, and the Commission will retain the authority to rescind its approval of any purported *pro forma* transaction that it determines involves a substantial change of control.”); *Submarine Cable Streamlining Order*, 16 FCC Rcd at 22201, ¶ 65 (“[A]pplicants are responsible for determining whether a proposed transaction is *pro forma* or substantial and for complying with the relevant rules and procedures that govern Commission approval of such transactions. The Commission retains the authority to determine that a particular transaction characterized by the applicants as *pro forma* is, in fact, a substantial change of control and therefore should be subject to the appropriate review. In such case, the Commission will rescind the grant of the purported *pro forma* assignment or transfer of control.”).



As a result, adopting these proposed changes would not deprive the Commission or third parties of transparency or existing procedures for relief, and instead would remove significant burdens.

**B. If the Commission Does Not Permit Post-Closing Notification for All *Pro Forma* Transactions, It Should Adopt Automated or Immediate Approval Processes for All *Pro Forma* Transactions That Require Prior Approval**

If the Commission does not adopt the streamlining proposals above, it can still serve the public interest by making a meaningful difference in expediting and clarifying its *pro forma* review procedures. As an alternative to the post-closing notification procedures proposed above, the Commission should adopt automated or immediate approval processes for all *pro forma* filings that are currently subject to prior approval procedures. The Commission adopted this exact change just a few years ago when it streamlined its rules regarding the processing of certain satellite and earth station applications. In 2015, the Commission amended Section 25.119 of its rules to state that *pro forma* assignment or transfer of control applications involving non-common carrier satellite space and earth stations would be deemed granted one business day after filing, so long as certain conditions are met.<sup>39</sup> Should the Commission decide not to eliminate the prior filing requirement altogether, the Commission should instead extend this “deemed granted” procedure to all *pro forma* transactions that today require pre-closing authorization, except where otherwise specifically prohibited (e.g., transactions involving designated entities, proxy contests, etc.).

To implement this “deemed granted” proposal, the Commission should modify the Universal Licensing System (“ULS”) to ensure that all *pro forma* applications are “consented to” (i.e., granted) via immediate approval procedures in the ULS overnight batch process, except

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<sup>39</sup> 47 C.F.R. § 25.119.

where otherwise specifically prohibited. If the Commission is unable to change its database, the Commission should establish internal staff procedures to ensure that qualified filings are identified and handled according to immediate processing procedures.<sup>40</sup> Under existing procedures, *pro forma* applications are routinely off-lined for review by an application examiner, which can add weeks of delay. Sometimes it is not clear why an application has been off-lined; in other instances, applications are off-lined for review of issues that are not relevant in the context of a *pro forma* transaction (e.g., transactions involving microwave licenses with open construction deadlines). To further streamline this process, the Commission should limit and publish the circumstances in which ULS will off-line a *pro forma* application.

ULS also should be modified to add an error checking option that will allow applicants, prior to filing, to determine whether a *pro forma* application will be off-lined and, if so, why. Implementing a functionality that alerts applicants that their application will be off-lined will help applicants ensure they submit accurate and complete filings, and prevent staffers from having to review an application and contact applicants for more information when the applicant can often provide the necessary elements in the first instance.<sup>41</sup>

### **III. THE COMMISSION SHOULD MAKE CERTAIN CLARIFICATIONS TO PROVIDE LICENSEES WITH GREATER CERTAINTY REGARDING *PRO FORMA* PROCEDURES**

In addition to simplifying the process for filing and reviewing applications and/or notifications involving *pro forma* transactions, the Commission should also reduce burdens on licensees and staff by issuing a declaratory ruling to clarify certain rules and policies and reduce

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<sup>40</sup> This is consistent with the FCC's treatment of leases supporting Contraband Interdiction Systems. *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2336, 2350, ¶ 33 (2017).

<sup>41</sup> A similar function exists in the Commission's broadcasting licensing database, and it allows applicants to ensure that their application is not missing elements or causing errors in the filing system.

the total number of non-substantive ownership changes that trigger a filing requirement. For example, the Commission should clarify that its logical and simplified procedures for CARS licenses apply to all Commission licenses and that changes in a company's corporate form (e.g., from a corporation to a limited liability company) are not automatically deemed changes in control. In the event the Commission retains a prior approval requirement for some licenses, the Commission should at least clarify which licenses qualify for *pro forma* post-closing notifications and which do not.

**A. The Commission Should Extend its Approach for CARS to All Commission Authorizations**

When the Commission streamlined its filing requirements for CARS licenses, it stated that no Commission approval, and therefore no filing, would be required where “ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee,” noting that Section 310(d) “does not appear to require Commission approval of ownership changes that do not involve a change in the identity or controlling interest of the licensee.”<sup>42</sup> Specifically, the Commission posited that it would not require notification “if there were merely a change in the structure of intermediate corporate entities without a change in ownership of the licensee or the ultimate controlling entity of the licensee.”<sup>43</sup> This is a common-sense approach and the Commission should clarify that this reasoning extends to all licenses and authorizations. Under this approach, filing requirements for *pro forma* transactions would only apply to an assignment of authorization (e.g., a licensee merging into its parent company or

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<sup>42</sup> *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, 1140-41, ¶ 12 (1985).

<sup>43</sup> *Id.* at 1140, ¶ 10. The Commission took a similar approach in the case of receive-only earth station registrations. *Satellite Streamlining Order*, 30 FCC Rcd at 14810, ¶¶ 306.

commonly owned and controlled affiliate) or to a transfer of control that affects the licensee's ultimate parent.

**B. A Change in Corporate Form Should Not Be Deemed a *Pro Forma* Change and Form 601, If Anything, Should Be Used to Effectuate Such Changes**

Despite the fact that a change in a licensee's (or a licensee's parent's) corporate form need not involve any change in the licensee's ownership interests, the Commission considers this to be a change of control and requires the filing of an assignment of authorization (or a transfer of control when there is a change in a parent company's corporate form) to effectuate the change. Indeed, for wireless licenses, ULS is currently designed such that the only way to change the licensee entity type for a call sign is to file an assignment of authorization on Form 603. Unless a change in legal entity type (e.g., from a corporation to a limited liability company) otherwise involves a substantive change in ultimate control of the license, the Commission should not deem them to be transfers of control. The Commission should permit changes to a licensee's corporate form to be effectuated via a Form 601 administrative update, without prior approval. Just as licensees are responsible for accurately judging whether a particular transaction is *pro forma*, they should also be responsible for determining whether a change in corporate form actually is a transfer of control and be held responsible for any failure to file if, in fact, the change in corporate form is a transfer of control. For example, the Commission could issue a declaratory ruling clarifying that where a licensee changing its corporate form will be retaining the same federal taxpayer identification number, no *pro forma* filing is required.<sup>44</sup>

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<sup>44</sup> Just as a licensee name change requires a special certification that the name change is not the result of a transfer of control, so too could Form 601 contain a special certification that a change of corporate form is not the result of a transfer of control.

**C. If Prior Approval Requirements Are Retained, the Commission Should Provide Greater Certainty Regarding Which Licenses Qualify for Post-Closing Notifications**

If the Commission does not amend the rules as proposed in Section II.A. above, at the very least, the Commission should issue a declaratory ruling to make consistent its guidance regarding which licenses qualify for post-closing notifications. There have been significant changes and additions since the Commission issued the *FCBA Wireless Order*. Subpart F of Part 1 of the Commission's rules, which governs wireless radio services applications and proceedings, covers licenses under 14 different Commission rule parts.<sup>45</sup> In addition, there currently exist more than 100 radio service codes to classify wireless licenses. As new services emerge, the Commission creates both new radio service codes and new rule parts; such as the newly-created Part 30 for Upper Microwave Flexible Use Service<sup>46</sup> and Part 96 (Citizens Broadband Radio Service),<sup>47</sup> which did not exist at the time of the *FCBA Wireless Order* and therefore were not addressed by it.

Due to all these changes, no up-to-date resource for licensees exists that lists the wireless radio station license types the Commission considers to be subject to post-closing notification procedures. Such a resource would be extremely useful for Commission licensees, so that they do not assume in error that a particular license type is eligible for post-closing notification when the Commission does not agree. This list would also save significant Commission time and resources by reducing the need for licensees to seek informal staff guidance on which *pro forma* procedures apply to their proposed transactions.

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<sup>45</sup> 47 C.F.R. § 1.901.

<sup>46</sup> *Id.* §§ 30.1 *et seq.*

<sup>47</sup> *Id.* §§ 96.1 *et seq.*

#### **IV. THE COMMISSION CAN FURTHER REDUCE ADMINISTRATIVE BURDENS BY STREAMLINING CERTAIN APPLICATION FORMS**

The Commission should make targeted changes to its filing systems that will promote licensees' ability to make necessary filings that today require complex workarounds. The Commission has recently acknowledged the benefits of facilitating electronic filing and reducing burdens on licensees and staff alike,<sup>48</sup> and should continue to fix these important but often unnoticed issues.<sup>49</sup> Although the Associations believe most, if not all, of the following proposals can be implemented simply by updating ULS, the Commission also could issue a declaratory ruling as necessary to clarify its filing processes.

##### **A. The Commission Should Update ULS to Enable Necessary Filings That are Currently Impossible to Make**

The Commission can streamline its filing processes by updating Form 608 to permit the assignment of spectrum leases via ULS. The *pro forma* assignment of spectrum Lease IDs is necessary, for example, when a subsidiary company merges into its parent or affiliate and the subsidiary is the lessee on one or more spectrum leases. While the rules currently contemplate that Commission Lease IDs can be assigned, Form 608 is not designed to accommodate this process. When Form 608 was introduced in 2006, the Commission instructed filers to employ a

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<sup>48</sup> See *Completing the Transition to Electronic Filing, Licenses and Authorizations, and Correspondence in the Wireless Radio Services*, Notice of Proposed Rulemaking, 34 FCC Rcd 8397 (2019); see also *id.*, Statement of Commissioner O'Rielly ("By making the vast majority of WTB filings electronic, requiring e-mail addresses on the applicable FCC forms, and eliminating the remaining correspondence sent by mail, the Commission would reduce not only its administrative costs, but also those of its licensees, and enhance the efficiency and transparency of the Commission's processes.").

<sup>49</sup> The Wireless Telecommunications Bureau recently announced that the categories of wireless radio service submissions that ULS had not been able to accept electronically, could be filed using a non-docketed option in the Commission's Electronic Comment Filing System ("ECFS"). See *Electronic Filing Now Available For All License Applications in the Wireless Radio Services*, Public Notice, DA 20-463 (rel. Apr. 29, 2020). While providing an electronic filing solution for these submissions via ECFS is certainly helpful, it is an electronic copy of a paper filing. Licensees and Commission staff will still need to use workarounds and separately process these filings unless ULS is updated to accept them.

workaround where the assignor and assignee would file an application for a new lease and cancel the previous lease.<sup>50</sup> Parties have now been relying on this workaround for nearly 14 years. By permitting Lease IDs to be assigned via ULS, the Commission would bring Form 608 in line with its existing rules and would eliminate the need for unnecessary filings. This would reduce administrative burdens for licensees and Commission staff alike. It would also promote transparency and the continuity of the Commission's records, as it would allow for a single Lease ID to cover the duration of a spectrum lease.<sup>51</sup>

The Commission's forms also should permit the assignment and transfer of control of special temporary authority ("STA"). Although the Commission's rules do not prohibit the assignment or transfer of control of an STA – *pro forma* or otherwise – ULS does not currently enable licensees to submit assignment or transfer of control filings for these authorizations. The Commission should therefore update Form 603 to permit the transfer of control or assignment of STAs and, as detailed above, subject such *pro forma* transactions to post-closing notification procedures.

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<sup>50</sup> *The Wireless Telecommunications Bureau Announces FCC Form 608 is Available for Filing Spectrum Leasing Notifications and Applications and Private Commons Arrangements*, Public Notice, 21 FCC Rcd 9748 (2006).

<sup>51</sup> There is broad support for streamlining the Form 608 process. *See, e.g.*, Comments of CTIA, WT Docket No. 19-38, at 18-19 (filed June 3, 2019); Reply Comments of Sprint Corporation, WT Docket No. 19-38, at 6-7 (filed July 1, 2019); Reply Comments of AT&T Services, Inc., WT Docket No. 18-374, WC Docket No. 18-378, at 5-8 (filed Mar. 11, 2019); Comments of Verizon, IB Docket No. 18-377, ET Docket No. 18-370, WT Docket No. 18-374, WC Docket No. 18-378, at 7 (filed Feb. 8, 2019); Reply Comments of AT&T Services, Inc., WT Docket No. 19-38, at 5-6 (filed July 1, 2019); Reply Comments of AT&T Services, Inc., WT Docket No. 19-212, at 3 (filed Nov. 14, 2019); Comments of Verizon, WT Docket No. 19-212, at 2-5 (filed Sept. 30, 2019).

**B. The Commission Should Eliminate Certain Questions on Form 603/608 When a Transfer of Control or Assignment is *Pro Forma***

The Commission would greatly reduce administrative burdens on applicants and Commission staff alike by eliminating questions on Forms 603 and 608 that are not applicable to *pro forma* transactions. The online versions of Forms 603 and 608 are already designed to automatically trigger or skip various question fields in response to previous entries from an applicant.<sup>52</sup> Therefore, the capability to skip certain question fields is already built into ULS and can be further leveraged to simplify *pro forma* filings.

First, for post-closing notifications, Questions 12a and 12b (dealing with designated entity information) should not be required because any license that remains subject to unjust enrichment provisions would not be eligible for inclusion on a post-closing notification.<sup>53</sup> Second, because a *pro forma* assignment or transfer of control does not impact competition in any way, responses to Questions 13 and 14—dealing with issues of market concentration and competitive impact—should not be required. Third, licensees should not be required to respond to Question 118 which deals with the construction status of each license. The primary purpose of Question 118 is to help the Commission confirm if an assignment or transfer of a license raises trafficking concerns. However, trafficking is not an issue in a non-substantial transaction, and the process of verifying and inputting this information for each affected license—particularly microwave licenses, of which there may be thousands in a single application—is time-consuming and burdensome. Not only would eliminating unnecessary question fields reduce

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<sup>52</sup> For example, if an applicant answers “yes” to the question of whether Form 603 is a post-closing notification of a *pro forma* transfer or assignment, the filer is prompted to enter the closing date. If the applicant answers “no,” that field is skipped.

<sup>53</sup> Question numbers in this section refer to Form 603, but the parallel question numbers on Form 608—where applicable—should be omitted as well.



administrative burdens for licensees, but it would also assist Commission staff by increasing the number of applications that qualify for immediate processing in ULS.

**C. The Commission Should Permit Spectrum Manager Lessees to Take Responsibility for Their Own ULS Filings**

ULS is currently programmed such that lessees of spectrum manager leases are not permitted to initiate or complete applications involving a *pro forma* change in ownership to a spectrum manager lessee. Instead, only the lessor is permitted to initiate and submit this filing, notwithstanding the fact that a *pro forma* transfer of control of a spectrum manager lessee does not involve or affect the lessor in any way. In other words, if a lessee on a spectrum manager lease undergoes a *pro forma* transfer of control, it is entirely reliant on the licensee to draft and submit Form 608 in a timely fashion. This imposes unnecessary costs on licensees, while requiring lessees to trust third parties to meet their compliance obligations. If the licensee fails to submit Form 608 in a timely fashion, the lessee nonetheless could be deemed in violation of the Commission's rules. If the licensee refuses or is unable to cooperate in submitting the form, the lessee retains the ability to file the required notification on paper, but this is a highly undesirable outcome. By empowering lessees to make this limited class of filings, the Commission does not shift *de facto* or *de jure* control over the leased spectrum to the lessee. There is no statute or rule that would prohibit the Commission from reprogramming Form 608 in this manner. Indeed, as it is currently possible for lessees to bypass the need to involve licensees by filing on paper, there is no reason for the Commission to prohibit electronic filings.

**V. CONCLUSION**

CTIA and USTelecom respectfully request that the Commission initiate a rulemaking proceeding and issue a declaratory ruling to simplify its filing requirements for *pro forma* assignments and transfers of control, and otherwise streamline its radio station license

application processes. By adopting the proposals herein, the Commission can increase certainty regarding the application of its rules, greatly reduce administrative burdens and costs on licensees, and make more efficient use of Commission resources.

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