6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[ET Docket No. 10-236 and 06-155; FCC 13-76]

Radio Experimentation and Market Trials –Streamlining Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission modifies on its own motion the rules adopted in this proceeding regarding transfer and assignment of experimental licenses of its rules. Upon reflection, the Commission found it in the public interest to specifically prohibit the transfer of program, medical testing, and compliance testing experimental radio licenses, while continuing to permit conventional experimental authorizations to be transferred with the written approval of the Commission. There is an inconsistency between the adopted rule and this prohibition, which is resolved by clearly prohibiting such transfers. In making this rule modification, it is noted that the rules provide options for entities to obtain an experimental license to ensure continuation of all experiments without lapse including those being conducted under a program, medical testing, and compliance testing license. Thus, this action will result in no harm to any qualified license applicant or licensee.

DATES: This rule requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and will become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, 202-418-2452, Rodney.Small@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, ET Docket No. 10-236 and 06-155, FCC 13-76, adopted May 28, 2013, and released May 29, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary of Order on Recconsideration

1. In this Order, the Commission modifies on its own motion the rules adopted in the Report and Order (R&O), 78 FR 25137, April 29, 2013, in this proceeding regarding transfer and assignment of experimental licenses issued under Part 5 of its rules.

2. In the Notice of Proposed Rulemaking (NPRM), 76 FR 6928, February 8, 2011, in this proceeding, the Commission, inter alia, proposed to establish research program, medical program, and innovation zone program Experimental Radio Service (ERS) licenses to complement the existing conventional experimental license. The Commission also proposed to amend the language of § 5.79 of the Commission's rules regarding ERS license transfers. The proposed language modified the title of the rule to specifically refer to conventional experimental licenses and preserved the core component of the rule by continuing to prohibit the transfer of such licenses, unless the Commission approves in writing such a transfer. The proposed rule did

not address transfers of the proposed program licenses. No comments were received on this proposal.

3. In the R&O, the Commission authorized three new types of ERS licenses, but modified the proposal set forth in the NPRM by classifying those licenses as program, medical testing, and compliance testing. The Commission also adopted the body of proposed § 5.79, but included the three new types of ERS licenses – in addition to conventional licenses – in the section heading. Thus, the R&O implies that, under amended § 5.79, the transfer of any type of ERS license is permitted with the written approval of the Commission.

4. Upon reflection, the Commission finds it in the public interest to modify § 5.79 to specifically prohibit the transfer of program, medical testing, and compliance testing experimental radio licenses, while continuing to permit conventional experimental authorizations to be transferred with the written approval of the Commission. As an initial matter, the Commission observes that the text of the R&O stated that the Commission would prohibit the transfer of compliance testing licenses. Thus, in this respect, there is an inconsistency between the adopted rule and this prohibition, which should be resolved by clearly prohibiting such transfers.

5. The Commission concluded that, based on the nature of the program, medical testing, and compliance licenses, transfer of these licenses should not be permitted. These new ERS licenses, which afford some important advantages relative to the conventional ERS license – including significantly more flexibility to undertake a broad range of experiments under a single authorization – also impose additional requirements on applicants of these new licenses, requirements that reflect that these licenses are more tailored to the unique characteristics of the particular licensed entity than is the case with conventional experimental licenses. For example,

unlike the eligibility requirements for conventional licenses, which require only that licensees be "qualified to conduct the types of operations permitted in § 5.3 of this part . . ," these new ERS licenses are limited to specialized organizations and institutions. Specifically, program experimental licenses are available only to "colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions;" medical testing licenses are available only to "hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring;" and compliance testing licenses are available only to "laboratories recognized by the FCC under subpart J of this chapter to perform (i) product testing of radio frequency equipment, and (ii) testing of radio frequency equipment in an Open Area Test Site." Program and medical testing licensees must also meet additional requirements concerning responsible party, public notification, and safety of the public to ensure that harmful interference to other licensed radio services is not caused by program and medical testing experiments. These factors necessitate a greater level of review of the specific attributes of the applicant and the details of the experimentation plans than the Commission undertakes when evaluating applications pertaining to a conventional license, and much of this additional information is not normally provided on a transfer application. Thus, it would be difficult for the Commission to ascertain if the transferee has the necessary knowledge, expertise, and internal controls required by the rules without introducing significant complexity to our existing transfer process (comparable to that required for initial licensing).

6. In addition, unlike a conventional ERS license, which conveys a narrowly defined right to operate a single experiment in a specific frequency band at specific locations, program and medical testing licenses will convey broad rights to operate multiple experiments in a variety of frequency bands at a single location under the licensee's control. It is only after the license grant that the exact characteristics of the experiment are revealed via a publicly accessible web-based registration system. In addition, the rules require a minimum period of 10 days between the registration and the commencement of the experiment for public comment. Because a program and medical testing license authorizes ongoing experimentation only at specified locations that the licensee controls, a transfer of these licenses to another party who would likely be at another location is problematic and could deprive interested parties who are concerned about potential interference of the ability to raise such concerns prior to experimentation. Moreover, compliance testing licenses convey additional flexibility beyond that provided for program and medical testing licenses. Specifically, the Commission notes that compliance testing licenses may operate on any frequency (including in restricted bands) and are not subject to the web-based prior notification requirement. Therefore, it does not find that there would be the same kind of significant public benefit in allowing any of these new licenses to be transferred as there is under some circumstances for conventional experimental licensees. Even with respect to conventional licenses, the Commission finds it prudent to permit license transfers only in certain circumstances, such as where the experimentation cannot be fruitfully continued by the licensee; accordingly, such transfers are not permitted without written Commission approval.

7. Finally, the Commission notes that there are practical options to ensure the continuation of an experiment being conducted under a program, medical testing, or compliance testing license in the event of a change in ownership or control of the licensee. First, an

experimenter may obtain a conventional license for the particular experiment. Or, with advance planning, the new owner, assuming it is duly qualified, may apply for and obtain one of the new licenses and complete the advance registration requirement prior to taking over the experimentation (either before or after the change in ownership or control of the licensee). And, as indicated, if the Commission were to allow assignments or transfers of these new forms of experimental license, the detail of the submissions and level of scrutiny that would be required – due to the nature of the operations conducted under such licenses – would not differ significantly from that which is required for obtaining an initial license. Thus, the Commission believes that modifying the rule to explicitly prohibit transfer of program, medical testing, and compliance testing licenses will result in no harm to any qualified license applicant or licensee.

Regulatory Flexibility Certification

8. The Regulatory Flexibility Act (RFA)[1] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] The Commission hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities for the following two reasons: (1) The action maintains the status quo for conventional experimental licensees, and (2) The Commission finds that prohibiting the assignment or transfer of program, medical testing, and compliance testing licenses will have, at most, a de minimis effect on small entities, in light of the comparable alternatives available, as described in paragraph 7 of the Order on Reconsideration.

[1] See 5 U.S.C. 604. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See 5 U.S.C. 605(b).

9. Indeed, no party provided any comments indicating either that a bar on such transactions would have any adverse effects or that permitting such transfers would provide any benefits. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Congressional Review Act

10. The Commission will send a copy of this Order on Reconsideration in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

11. Pursuant to sections 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, and 303, and §§ 1.1 and 1.108 of the Commission's rules, 47 CFR 1.1 and 1.108, this Order on Reconsideration IS ADOPTED.

12. Section 5.79 of the Commission's rules, 47 CFR IS AMENDED as set forth below in the rule changes. Section 5.79 contains a modified information collection requirement that requires approval by the Office of Management and Budget under the Paperwork Reduction Act, and WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

List of Subjects in 47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION.

Gloria J. Miles,
Federal Register Liaison.

Rule Changes

For the reasons set forth in the preamble the Federal Communications Commission amends 47 CFR part 5 as follows:

PART 5 EXPERIMENTAL RADIO SERVICE

1. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 336 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, 336. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

2. Section 5.79 is revised to read as follows:

§ 5.79 Transfer and assignment of station authorization for conventional, program, medical testing, and compliance testing experimental radio licenses.

(a) A station authorization for a conventional experimental radio license, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission decides that such a transfer is in the public interest and gives its consent in writing.

(b) A station authorization for a program, medical testing, or compliance testing experimental radio license, the frequencies authorized to be used by the grantees of such authorizations, and the rights therein granted by such authorizations shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of.

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