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In the Matter of: )  
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)  
CTIA-USTelecom Petition for Rulemaking )  
And Declaratory Ruling Regarding Certain ) WT Docket No. 20-186  
*Pro Forma* Transactions ) RM-11860  
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## Comments of the R Street Institute

### I. Introduction

Transactions involving radio operating rights often involve significant administrative costs for both the parties involved and the Commission. As only a limited number of operators can coexist at the same location, time and frequency, the Commission must review transactions to ensure that operating rights are assigned in a way that benefits the public interest. However, not all license transfers raise public interest concerns. As the Commission has noted in the past, *pro forma* transactions, which do not involve a change in the ultimate ownership control of the licenses, are often presumed to be in the public interest.<sup>1</sup>

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<sup>1</sup> *Petition of CTIA – The Wireless Association and USTelecom for Rulemaking and Declaratory Ruling to Streamline Federal Communications Commission Processes Regarding Non-Substantial Assignments of Licenses and Transfers of Control* (filed June 5, 2020), p. 2. <https://bit.ly/2CO2w9Q>. [Herein after “Petition”]

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Unfortunately, many procedures for *pro forma* transactions create unnecessary burdens on license holders that can generate unnecessary waste and disincentivize transactions. Therefore, R Street supports the CTIA-USTelecom Petition to streamline these processes.

## **II. By reducing transaction costs for *pro forma* transactions on the back end, the Commission will reduce barriers to secondary market transactions**

As R Street has consistently explained, markets remain the most efficient means of assigning radio operating rights.<sup>2</sup> Markets allow the parties who value operating rights the most to purchase those rights. While this most notably comes in the form of auctioning off the initial license, secondary market transactions ensure that if the original licensee no longer values that spectrum, or if a new operator values it more than the license holder, the parties can agree to transfer those rights, efficiently assigning them.<sup>3</sup>

Therefore, the Commission's primary role in facilitating secondary market transactions, apart from ensuring that the transactions serve the public interest, should be lowering transaction costs. These costs include things like disaggregating or partitioning licenses, an issue the Commission is currently reviewing.<sup>4</sup> Further, a myriad of different factors can increase transaction costs, and often, these factors are not readily apparent. However, they can have an impact on potential transactions and should therefore be considered by the Commission.

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<sup>2</sup> See, e.g., Joe Kane, "The Role of Markets in Spectrum Policy," *R Street Policy Study* No. 146, June 2018. <https://bit.ly/3joY4iD>. [Herein after "Role of Markets in Spectrum Policy"]; "R Street Institute Comments on Partitioning, Disaggregation and Leasing of Spectrum," WT Docket No. 19-38, May 31, 2019. <https://bit.ly/3eOPfee> [Herein after "Partitioning and Disaggregation Comments"]; "Submitted Statement for the Record of Joe Kane Before the Subcommittee on Communications and Technology of the Energy and Committee," Hearing on Our Wireless Future: Building a Comprehensive Approach to Spectrum Policy, U.S. House of Representatives, July 16, 2019. <https://bit.ly/3fMVNvp>.

<sup>3</sup> "Role of Markets in Spectrum Policy," pp. 3-4. <https://bit.ly/3joY4iD>.

<sup>4</sup> "Partitioning and Disaggregation Comments," p. 2. <https://bit.ly/3eOPfee>.

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While the petition does not propose any specific changes regarding secondary market transactions or the Commission's role in reviewing transactions between separate entities, lowering transaction costs on the back end of a merger or acquisition will inevitably reduce the overall costs.

For example, if a company purchases an operator with multiple existing licenses, that initial transaction will be reviewed to ensure it serves the public interest and complies with Commission rules. However, once the Commission approves the merger or acquisition, the acquiring party may want to reorganize and shift licenses around to different subsidiaries.<sup>5</sup> Unfortunately, this also comes with additional costs, as the acquiring party now must determine which licenses require additional filings, and prepare and submit the filings to the Commission for review. When deciding whether a merger involving radio licenses makes financial sense, companies will need to factor in these additional costs that occur on the back end of the transaction.

Therefore, even apart from the facial benefits of reducing administrative burdens, the policy proposals in the petition will also have a positive impact on the ability of companies to engage in secondary market transactions.<sup>6</sup> By reducing these additional transaction costs on the back end, the overall costs associated with acquiring the operating rights are diminished, even if the front-end costs in terms of Commission review and acquisition of the license remain unchanged.

### **III. Streamlining *pro forma* transactions will generate significant benefits by easing administrative burdens**

The administrative burdens associated with *pro forma* transactions cause real harm for both the Commission and license holders. For transactions that may not ultimately serve the public interest,

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<sup>5</sup> See, e.g., Sprint Corporation, "Description of Transaction, Public Interest Statement, and Related Demonstrations," Commission File No.: 001-04721, June 18, 2018, p. 138. <https://bit.ly/3jrjxja>.

<sup>6</sup> See *generally* Petition.

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these harms are unavoidable. However, as *pro forma* transactions do not present the same risks, the Commission should look to alleviate these burdens to help generate significant benefits.

As the petition highlights, the Wireless Telecommunications Bureau processes an average of 600 *pro forma* applications every year.<sup>7</sup> This translates to significant hours of staff time dedicated to reviewing and approving transactions that presumptively serve the public interest.<sup>8</sup> This places undue burden on already strained commission resources, and ultimately takes staff time away from other, potentially more pressing issues.

In isolation, this is bad enough. However, wireless technologies have become ubiquitous in modern society. And, while many of these devices leverage unlicensed technologies like Wi-Fi and Bluetooth for connectivity, many others rely on licensed operations as a means to alleviate harmful interference concerns. For example, utilities often rely on FCC licenses for critical communications needs: most notably for remotely monitoring and controlling equipment, gathering data related to services and coordinating the workers and machines on location.<sup>9</sup> Indeed, in mission critical devices, it may be unfeasible to operate over unlicensed spectrum bands, as doing so requires the acceptance that other devices may legally cause harmful interference even though they operate within Commission rules.<sup>10</sup> Many industries like healthcare and manufacturing will increasingly rely on licensed operations as the amount of concurrent operations in a given location, time and frequency increases.

The proliferation of wireless technology also requires entities that previously never had a reason to interact with the Commission to do so to obtain licenses. These entities, which often do not have the institutional knowledge to efficiently navigate Commission processes, must now work through the

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<sup>7</sup> *Id.* at iii.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> Jacqueline Java and Catherine McCarthy, "Utilities Must Track FCC Licensing, Spectrum Issues," *Law360* (Oct. 25, 2019), <https://bit.ly/32l4t8m>.

<sup>10</sup> Jeffrey Westling, "Future of the Internet of Things in Mission Critical Applications," *Silicon Flatirons* (Nov. 2016), <https://bit.ly/2ZD0oe1>.

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myriad administrative regulations associated with radio operations. This will lead to increased costs to ensure full compliance with Commission rules.

In view of the foregoing, by streamlining *pro forma* license review, the Commission will drastically limit the burdens on these organizations. Instead of allocating their resources for legal fees to determine the necessary obligations and actions they must take, these companies will be able to invest resources on their products and services, ultimately benefiting their customers.

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R Street appreciates the efforts the Commission has thus far taken to reduce administrative burdens and eliminate outdated regulations, and the CTIA-USTelecom Petition presents another opportunity for the Commission to continue these efforts.<sup>11</sup>

Respectfully submitted,

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Jeff Westling  
*Technology and Innovation Resident Fellow*

July 24, 2020

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<sup>11</sup> The R Street Institute (“R Street”) is a nonprofit, nonpartisan, public-policy research organization. R Street’s mission is to engage in policy research and educational outreach that promotes free markets and limited, effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.