

spectrum in geographic areas where there has been a "market failure" and spectrum is "unwanted" or "underutilized." Gateway suggested that the Commission could issue licenses to equipment manufacturers in exchange for a reasonable one-time payment to the United States treasury, or for a modest spectrum use fee payable on an annual basis to the Commission, or even at no charge, but did not suggest how the Commission would decide among competing parties who might seek to obtain any such license. Gateway asserted that this new licensing mechanism of offering spectrum to equipment manufacturers would create new opportunities for small businesses and others to obtain access to spectrum for a variety of niche uses and services.

9. In reply comments, CTIA asserted that the Commission should reject Gateway's proposal as outside of the scope of the Commission's *Second Further Notice*, which sought comment only on the use of opportunistic devices in licensed spectrum, not comment on new ways to give an interested party an initial spectrum license for a private commons. Accordingly, the Commission cannot consider Gateway's proposal in this proceeding because doing so would violate the requirement for adequate notice under the Administrative Procedures Act (APA). CTIA further asserted that the proposal would create a new licensing scheme in violation of the requirements under section 309(j) of the Communications Act, as amended, which requires that the spectrum be subject to competitive bidding.

### III. Third Report and Order

10. We determine that the requirements set forth in the *Second Report and Order* and codified in our rules, 47 CFR 1.9080, provide the right balance in encouraging the development of devices for operation within a private commons arrangement while at the same time placing the appropriate degree of responsibility on licensees (or spectrum lessees) to ensure that the users and devices do not cause harmful interference in areas outside of the private commons and the license authorization. Accordingly, we affirm the general policies and rules the Commission adopted for private commons, including the requirement that licensees (or spectrum lessees) retain both *de facto* control over use of the spectrum and direct responsibility for ensuring that users and the devices used within the private commons comply with the Commission technical and services rules under the license authorization, including those relating to interference. Because the licensees (or

lessees) themselves, in their capacity as managers of private commons, exercise control under the license authorization and are responsible for establishing the technical parameters of the devices that would be used within the private commons, they must exercise their responsibilities so as to ensure compliance with the rules, including bearing direct responsibility for establishing parameters of use that prevent harmful interference beyond the private commons areas and the boundaries of their licenses.

11. Based on the scant record before us and the wide variety of ways in which a private commons could be implemented, we decline to modify our rules at this time to further detail the responsibilities placed on the managers of private commons. We are in no position, based on what is before us, to make any determination by rule, as Cingular Wireless requests, as to whether a particular mechanism may or may not be sufficient for a licensee (or spectrum lessee) to exercise its responsibilities in a given instance. Nor do we conclude that establishing strict technical rules or requirements, as requested by CTIA, is appropriate. We do not want to limit at this time the various means by which a licensee (or lessee) might fulfill its obligations as manager of a private commons. While a "shut down" mechanism may be effective, it is not the only conceivable means to ensure that a licensee (or lessee) exercises *de facto* control over the use of the spectrum and complies with the Commission's rules under the license authorization. We see no need at this time to limit other possible means that might be consistent with the Commission's private commons framework.

12. Finally, because Gateway's proposal is outside the scope of the *Second Further Notice*, and not a logical outgrowth of it, we will not address it in this proceeding. The *Second Further Notice* sought comment on ways to increase spectrum access through opportunistic uses of spectrum specifically within the context of the Commission's spectrum leasing policies and rules set forth in the proceeding addressing the development of secondary markets. The *Second Further Notice* did not contemplate revising the Commission's initial licensing rules. We note that the opportunities that Gateway sees for new uses of spectrum also exist within the private commons framework that the Commission has established in the *Second Report and Order*.

### IV. Ordering Clauses

13. Pursuant to sections 1, 4(i), 301, 303(r), and 503 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 301, 303(r), and 503, *it is ordered that this Third Report and Order* is adopted. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Third Report and Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-14768 Filed 7-31-07; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 15

[ET Docket No. 03-201; FCC 07-117]

### Unlicensed Devices and Equipment Approval

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document dismisses two petitions for reconsideration of the rules adopted in this proceeding. It dismisses a petition filed by Warren C. Havens and Telesaurus Holdings GB LLC ("Havens") requesting that the Commission suspend the rule changes adopted for unlicensed devices in the 902-928 MHz (915 MHz) band until such time as it completes a formal inquiry with regard to the potential effect of such changes to Location and Monitoring Service (LMS) licensees in the band. This document also dismisses a petition for reconsideration filed by Cellnet Technology ("Cellnet") requesting that the Commission adopt spectrum sharing requirements in the unlicensed bands, *e.g.*, a "spectrum etiquette," particularly in the 915 MHz band.

**DATES:** Effective August 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Hugh L. Van Tuyl, (202) 418-7506, e-mail: [Hugh.VanTuyl@fcc.gov](mailto:Hugh.VanTuyl@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 03-201, FCC 07-117, adopted June 19, 2007 and released June 22, 2007. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and

copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

### Summary of the Memorandum Opinion and Order

1. The Commission dismissed two petitions for reconsideration of the rules adopted in the *Report and Order*, 69 FR 54027, September 7, 2004, in this proceeding. It dismissed a petition for reconsideration filed by Warren C. Havens and Telesaurus Holdings GB LLC ("Havens") requesting that the Commission suspend the rule changes adopted for unlicensed devices in the 902-928 MHz (915 MHz) band until such time as it completes a formal inquiry with regard to the potential effect of such changes to Location and Monitoring Service (LMS) licensees in the band. The Commission also dismissed a petition for reconsideration filed by Cellnet Technology ("Cellnet") requesting that the Commission adopt spectrum sharing requirements in the unlicensed bands, e.g., a "spectrum etiquette," particularly in the 915 MHz band.

2. Havens requested that the Commission suspend the rule changes adopted in this docket for unlicensed devices in the 915 MHz band until such time as the Commission completes a formal inquiry with regard to the potential effect of such changes to M-LMS licensees in the band and it determines either that there will be no material adverse effects or that it will allow counterbalancing changes (e.g., waivers or forbearance of LMS rules) to maintain the balance between higher power LMS systems and unlicensed devices. Havens does not specify which particular rule changes it believes should be suspended. In support of this request, Havens asserts that it cannot "efficiently or effectively" comply with rule § 90.353(d) which requires that M-LMS licensees design, construct and field test their systems to minimize adverse effects on part 15 devices if unlicensed devices operating in the band change as a result of the new rules adopted in the *Report and Order*. It claims that the new rules will lead to increased spectrum use of the 915 MHz band by unlicensed devices and thus will adversely affect M-LMS systems by changing the "regulatory coexistence" between part 15 and LMS operations

(i.e., the balance of aggregate M-LMS systems and aggregate unlicensed devices) and by altering the premise of the "safe harbor" in rule § 90.361 (i.e., that unlicensed devices would not operate in close proximity to M-LMS). Havens further alleges that the part 15 rule changes violate § 15.5 of the rules, which requires that unlicensed devices not interfere with licensed system operations.

3. The Commission declines to suspend the part 15 rule changes adopted in the *Report and Order* or consider modifying the M-LMS rules as requested by Havens. The Commission notes that Havens did not raise any objections to any proposals in the *Notice of Proposed Rule Making* (NPRM), 68 FR 68823, September 17, 2003, during the pendency of this proceeding. A petition for reconsideration that relies on facts not previously presented to the Commission will be granted only if: The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; the facts relied upon were unknown to the petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or the Commission determines that consideration of the facts relied on is required in the public interest. Havens does not address why it did not previously participate in this proceeding or claim that any of these three conditions are met in this case.

4. The Commission's rules also require that a petition for reconsideration state with particularity the respects in which the petitioner believes the action taken should be changed. The Commission modified several part 15 rules that apply to unlicensed devices that may operate in the 915 MHz band, in addition to other frequency bands. Havens does not identify the particular rule changes that it believes should be suspended. Havens provides only a mere statement of belief that the rule changes in this proceeding will lead to increased use of part 15 devices in the 915 MHz band and thus will result in adverse effects on M-LMS operations. It provides no evidence or analysis to support this assertion. Finally, the Commission notes that Havens raised essentially the same arguments in its petition for reconsideration in ET Docket No. 99-231 concerning changes to the part 15 rules for spread spectrum devices. The Commission rejected these same arguments in that proceeding.

Accordingly, the Commission dismissed the Havens petition.

5. The Commission recently initiated a proceeding to reexamine the rules for the M-LMS operating in the 904-909.75 MHz and 919.75-928 MHz portion of the 915 MHz band. See *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Notice of Proposed Rulemaking* in WT Docket No. 06-49, 21 FCC Rcd 2809 (2006), 71 FR 15658, March 29, 2006. That proceeding was originated by the Commission partly in response to a 2002 petition for rule making filed by Progeny LMS, LLC requesting changes to these rules. That proceeding is the appropriate forum for Havens to address its concerns about the M-LMS rules, including the "safe harbor" rule regarding the operational relationship between part 15 unlicensed devices and part 90 M-LMS devices.

6. Cellnet requests reconsideration of the Commission's decision not to adopt a spectrum etiquette for unlicensed devices. Cellnet produces equipment for the automated reading of gas, water, and electric meters that uses spread spectrum transmitters operating on an unlicensed basis in the 915 MHz band. It states that the Commission should: Adopt a duty cycle limitation and other effective spectrum etiquette for any newly certified devices using digital modulation that operate in the 915 MHz band, and confirm in a public notice the obligation of all operators of unlicensed devices in this band authorized under part 15 to avoid causing harmful interference to licensed and unlicensed devices operating in the band and to work cooperatively with operators of any other devices that may be experiencing interference to resolve any such incidents. Cellnet states that these actions are necessary to assure that users taking advantage of newly authorized technical flexibility in this heavily encumbered band do not create the type of interference that will deny the continued effective use of this band by existing and future users. It submits that prior to the Commission's adoption of the new rules on which new entrants have relied on to operate at higher power and without effective duty cycles, the few problems that arose among devices operating in the band were readily resolved with cost effective engineering solutions by affected manufacturers and users.

7. The Commission's rules require that a petition for reconsideration and any supplement thereto shall be filed within thirty days from the date of public notice of such action. Further, the petition must state with particularity the respects in which the petitioner

believes the action taken should be changed. Cellnet's petition does not describe any specific rule changes that it wishes the Commission to make. It simply requests that the Commission adopt "a duty cycle limitation and other effective spectrum etiquette," but does not recommend any specific duty cycle limitation or provide any technical details of what it believes would constitute an "effective spectrum etiquette." After the 30 day reconsideration period, Cellnet made an *ex-parte* presentation to the Commission's staff describing a spectrum etiquette that it believes the Commission should require for digitally modulated spread spectrum transmitters operating in the 915 MHz band under § 15.247 of the rules. Because Cellnet's petition and subsequent filings do not satisfy the Commission's rules for specific relief and timeliness, the Commission dismissed its petition. Although the Commission dismissed Cellnet's petition, it is seeking comment on ideas for a spectrum etiquette in the 915 MHz band, in a *Further Notice of Proposed Rule Making*. This action will allow the Commission to fully consider Cellnet's suggestion to develop a spectrum etiquette that is a trade-off between transmission duration and output power, and also to address certain related issues that Cellnet did not discuss such as transition dates by which new equipment would have to comply.

#### Ordering Clauses

9. The petition for reconsideration filed by Havens is hereby dismissed. This action is taken pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

10. The petition for reconsideration filed by Cellnet Technology is hereby dismissed. This action is taken pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

#### Congressional Review Act

8. The Commission will not send a copy of the Memorandum Opinion and Order, pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). The Congressional Review Act (CRA) was addressed in the Report and Order released in this proceeding, FCC 04-165, 69, FR 54027, September 7, 2004. The Memorandum Opinion and Order dismisses the petitions for reconsideration of the Report and Order.

#### List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-14882 Filed 7-31-07; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 22 and 27

[ET Docket No. 00-258; WT Docket No. 02-353; DA 07-1120]

#### Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands

**ACTION:** Final rule; announcement of effective date and public information collections approval.

**SUMMARY:** The Federal Communications Commission (FCC) received Office of Management and Budget (OMB) approval on June 25, 2007, pursuant to the Paperwork Act of 1995, Public Law 104-13, for the following information collections contained in 47 CFR 27.1166(a), (b) and (e); 27.1170; 27.1182(a), (b); and 27.1186, that were published at 71 FR 29818, 29836-40 (May 24, 2006). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

**DATES:** On June 25, 2007, OMB approved the information collections for 47 CFR 27.1166(a), (b) and (e); 27.1170; 27.1182(a), (b); and 27.1186, that were published at 71 FR 29818, 29836-40 (May 24, 2006). Accordingly, the effective date for the information collections contained in these rules is June 25, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418-2483 or via the Internet at [Jennifer.Mock@fcc.gov](mailto:Jennifer.Mock@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-1030.

*OMB Approval Date:* 6/25/2007.

*OMB Expiration Date:* 6/31/2010.

*Title:* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands.

*Form No.:* N/A.

*Estimated Annual Burden:* 1,716 respondents; 29,147 annual burden hours; 2 hours per respondent; and \$2,271,200 annual costs.

*Needs and Uses:* The *Ninth Report and Order (Ninth R&O)* adopted

relocation procedures to govern the relocation of: (1) Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band; and (2) Fixed Microwave Service (FS) licensees in the 2110-2150 MHz and 2160-2180 MHz bands. The *Ninth R&O* also adopted cost sharing rules that identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of FS operations in the 2110-2150 MHz band 2160-2200 MHz band and AWS entrants benefiting from the relocation of BRS operations in the 2150-2160/62 MHz band. The adopted relocation and cost sharing procedures generally follow the Commission's relocation and cost sharing policies delineated in the *Emerging Technologies* proceeding, and as modified by subsequent decisions. These relocation policies are designed to allow early entry for new technology providers by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees, and have been tailored to set forth specific relocation schemes appropriate for a variety of different new entrants, including AWS, MSS, Personal Communications Service (PCS) licensees, 18 GHz Fixed Satellite Service (FSS) licensees, and Sprint Nextel. While these new entrants occupy different frequency bands, each entrant has had to relocate incumbent operations. The relocation and cost sharing procedures adopted in the *Ninth R&O* are designed to ensure an orderly and expeditious transition of, with minimal disruption to, incumbent BRS operations from the 2150-2160/62 MHz band and FS operations from the 2110-2150 MHz and 2160-2180 MHz bands, in order to allow early entry for new AWS licensees into these bands. In the *Ninth R&O* the FCC adopted disclosures related to negotiation and relocation of incumbent FS radio links and incumbent BRS systems, and for the registration of these relocation expenses with a clearinghouse, including documentation of reimbursable costs for FS and BRS relocations, documentation when a new AWS and MSS Ancillary Terrestrial Components (MSS/ATC) operators trigger a cost-sharing obligation, prior coordination notices to identify when a specific site will trigger a cost-sharing obligation, and retention of records by the clearinghouses. (Privately administered clearinghouses, selected by the FCC, will keep track of and administer the cost sharing obligations over the next 10-15 years as AWS and MSS-ATC operators build new stations that require them to