

it able to do so, the Commission could determine, upon receiving an assertion of compliance by a licensee, that the indicated build out is insufficient and that the licensee must do more in order to satisfy its construction requirements. This would require additional construction and investments not planned for by the licensee, which ultimately could prove more expensive to comply with than if they had been planned for and completed with the original build out. We therefore seek comment regarding whether the Commission should establish a baseline above which a licensee must reach in order to minimally comply with our substantial service requirements. We seek comment on whether this baseline should be determined in terms of signal strength or using some other metric.

18. We also seek comment on two other approaches for determining whether spectrum is being used in accordance with construction requirements or for purposes of finding available spectrum in rural areas. First, the Commission has developed rules defining protected service areas for site-based incumbents, such as 220 MHz, 800 MHz SMR, and paging licensees. We seek comment on how we should address these and other differences in estimating coverage in rural areas. In light of the fact that our rules defining protected service areas vary by service, we ask commenters whether we should harmonize these regulations across services and establish a data base of available "white space" in rural areas. Second, we seek comment on expanding the use of spectrum "audits" and on exploring the means and methodologies for making in situ measurements of signal strength in selected rural areas to maintain an "inventory" of available spectrum resources. We inquire as to whether expanded use of such audits would help identify unused spectrum in rural areas so as to ultimately make more spectrum, and thus more service, available in these markets. We also inquire as to what may be an appropriate way to test whether a spectrum inventory is feasible. Should we limit such an inventory to the most rural or underserved areas? We believe markets in Alaska, Appalachia, and the Mississippi Delta may be particularly appropriate, and we inquire as to whether commenters recommend these or other areas.

b. Re-licensing vs. Market-Based Mechanisms

19. As described above, the Commission practices re-licensing in several different forms, both in terms of the conditions under which licensed

spectrum is returned to the Commission, and in terms of how that spectrum subsequently is made available to other users. Generally, licensed spectrum may return to the Commission due to non-use under a "complete forfeiture" standard, as applied to PCS licensees, or under a "keep what you use" standard, as applied to cellular licensees. Once this spectrum is reclaimed, the Commission may then re-license via competitive bidding, as with PCS licenses, or it may use a non-auction mechanism such as the cellular unserved area re-licensing rule.

20. We seek comment on when, and under what circumstances, the Commission should use re-licensing as a means to increase access to spectrum, and thus service, especially in rural areas. We do not propose to change the current re-licensing rules for any current wireless service. Rather, we inquire as to whether we should apply one of the current rules, or some other rule, to future spectrum allocations. We also inquire as to whether we should apply a new standard to spectrum that has been returned, under the current rules, to the Commission for re-licensing at the end of a licensee's second term.

21. In the event of spectrum re-licensing, we seek comment on whether there are particular construction standards, such as "complete forfeiture" or "keep what you use," that are most effective in promoting access and service, especially in rural areas. In particular, we seek comment on whether a "keep what you use" standard based on the cellular unserved area model is most appropriate to advance our goal of promoting rural service, should we decide to extend this approach to additional services. Further, how might the "keep what you use" approach work in tandem with the substantial service safe harbor that we propose below?

22. As described above, in the cellular service, after the initial five-year period, there is an unserved area licensing process whereby unconstructed portions of a market become available to other parties. In a Petition for Reconsideration filed in WT Docket 01-108, Dobson proposed that licensees should be permitted to extend into unserved areas of less than 50 square miles operating on a secondary non-interference basis to any licensee that might be authorized to cover the area in the future. While we intend to address Dobson's petition in the context of that proceeding, we seek comment on whether there are other changes to the cellular unserved area rules that could promote service in rural areas. We also seek comment on

whether, for purposes of defining use, the most appropriate approach would be based on the PCS model (*i.e.*, allowing providers to define construction based on their particular technology and application). We note that the approach with the PCS model is technology neutral, yet it requires a sufficiently strong signal to produce a reasonable level of service.

23. In addition, we seek comment on the relative merits of re-licensing as compared to secondary markets. Are there particular circumstances or factors that we should consider in deciding to use one approach or the other? We recognize that re-licensing is a more regulatory approach, and we therefore inquire as to whether we should limit its application. What market conditions or other measures should we consider in determining whether to apply re-licensing to a particular service or in a particular market? Is this approach more appropriate for rural markets, and if so, why?

24. Finally, we note that while the Spectrum Policy Task Force recommended that the Commission focus on secondary markets as the primary means to increase access to spectrum, it also recommended that, after there has been sufficient time to consider the effectiveness of this approach, the Commission also consider alternative mechanisms such as government-defined easements. We seek comment on whether now is an appropriate time to consider the use of spectrum easements for new licenses.

C. Performance Requirements

25. Subsequent to the enactment of section 309(j), the Commission initiated the *Competitive Bidding* proceeding, which, among other things, addressed how the Commission intended to implement the statutory mandate for "performance requirements" for licenses awarded through competitive bidding. *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, *Notice of Proposed Rulemaking*, 58 FR 53489 (October 15, 1993). Depending upon the service, the Commission's construction benchmarks may require coverage of a certain percentage of the licensed area's population or coverage of a certain percentage of the licensed area's geographic area. For many services, the Commission has adopted a flexible "substantial service" construction standard that allows licensees that are providing a beneficial use of the spectrum to retain their authorizations. While the definition of "substantial service" is generally consistent among wireless services, the