

construction, deployment and continuity of new and existing wireless services in rural and underserved areas. We also ask how this change in our policy would affect the ability of small businesses to obtain much needed startup capital.

69. On the other hand, despite these potential benefits, we recognize that a licensee's current ability to grant security interests in its stock and in the proceeds of a license sale may already provide it with financing opportunities that are similar to those we seek to foster by our proposal below. If so, it would appear that we may not significantly enhance financing opportunities. We ask all interested parties, including licensees, vendors, RUS, lenders and others to comment on these potential benefits and to identify any other specific benefits that could accrue from such a policy change.

70. We further note that any security interest granted to RUS would be expressly conditioned, in writing as part of all applicable financing documents, on the Commission's prior approval of any assignment of the license or any transfer of *de jure* or *de facto* control of the licensee to RUS. We discuss below the reasons for this limitation and seek comment on some specific concerns.

71. First, in addition to the benefits from lower costs of and greater access to capital, we seek comment on whether modifying our policy to permit RUS to take a security interest in FCC licenses is a natural outgrowth of the Commission and judicial developments discussed above, which recognize the value and ability of a lender obtaining a security interest in the licensee's stock, proceeds and other assets without infringing upon the Commission's statutory obligations. For instance, in *MLQ Investors, L.P. v. Pacific Quadracasting, Inc.*, 146 F.3d 746 (9th Cir. 1998), the U.S. Court of Appeals for the Ninth Circuit determined that a security interest in the proceeds of the sale of a broadcast license can be perfected prior to the sale of the license, and that "[g]overnment licenses, as a general rule, are considered to be 'general intangibles' under the Uniform Commercial Code, 'i.e., personal property interests in which security interests may be perfected.'" The Ninth Circuit identified the Commission's primary policy concern by stating that "[t]he FCC may prohibit security interests in licenses themselves because the creation of such an interest could result in foreclosure and transfer of the license without FCC approval." The Ninth Circuit went on to explain that the Commission's interest in regulating spectrum to promote the public interest

is not implicated "by a security interest in the proceeds of licenses, which does not grant the creditor any power or control over the license." We also note that application of state laws under Article 9 of the Uniform Commercial Code is generally limited in connection with the treatment of security interests of non-assignable "personal property" governed by federal law. We seek comment on how cases like *MLQ Investors* and the application of the UCC provisions have affected lending practices for FCC licensees and what, if any, impact the grant of security interests in spectrum licenses to RUS might have on established law in this area, including the appropriate method of how RUS would perfect a security interest in FCC licenses.

72. Next, we address the concerns that have led us to propose that any security interest granted to RUS be expressly conditioned on the Commission's prior approval of any assignment of the license or any transfer of *de jure* or *de facto* control. We ask whether it may be feasible for a licensee to grant RUS a security interest in an FCC license without compromising our obligation to maintain control of spectrum in the public interest, so long as we are completely able to fulfill our applicable mandates under the Communications Act of 1934, as amended. For example, we must and will preserve our authority under section 310(d) to review and approve license assignments and transfers of control, to assess and confirm the basic qualifications of assignees and transferees, and, more generally, to exercise our statutory responsibility to determine whether the section 310(d) transaction in question will serve the public interest, convenience and necessity. The Commission has historically disallowed granting security interests in FCC licenses, based upon its concern that such financing arrangements may interfere with its ability to regulate the assignment of licenses, the transfer of control over licenses, and, more generally, the use of spectrum. If, however, we can ensure that appropriate prior approval of assignments and transfers is obtained, and if we further limit any grant of a security interest to RUS, a federal loan agency, do commenters believe that our policy and statutory concerns would be satisfactorily addressed, thus enabling us to promote flexibility and financing opportunities for licensees serving rural and underserved areas? In this regard, we note that we have seen no detectable erosion of our regulatory authority from our current policy of permitting

licensees to engage in a very similar type of financing arrangement—that is, a licensee grant of a third party security interest in its stock and the proceeds of the sale of the license, along with third party perfection of that interest, prior to the sale of the subject license. We seek comment on the relative impact that such developments may have on our ability to implement and enforce our statutory obligations.

73. We recognize that permitting RUS to obtain security interests in FCC licenses would provide RUS with greater rights vis-à-vis the licensee and licensee than it currently can obtain. We therefore ask whether our proposed condition requiring prior FCC approval before RUS can foreclose on the license would satisfactorily and adequately preserve existing regulatory relationships. The type of security interest that we are seeking comment on would be a right between the licensee and RUS, exercisable only upon Commission approval. Would such a right be fully consistent with our responsibilities under the Communications Act? We ask whether it would not be different than granting RUS an option to purchase a license, for example. We note that we would review and require our approval of an assignment to RUS in accordance with our transfer and assignment policies before RUS could assume control of a license. Such a process is designed to ensure that the federal government retains appropriate control over use of the spectrum consistent with sections 301 and 304 of the Act, and that the perfection of a security interest in a license does not interfere with these or other statutory obligations and policy prerogatives. For example, would a security interest in a license give RUS any rights that might conflict with the Commission's regulatory oversight (other than an unapproved foreclosure or assertion of control) that it could exercise against the licensee? Furthermore, in light of the fact that RUS is a federal government agency, we ask whether we may have greater statutory latitude to grant it a security interest while still ensuring that the federal government retains control over spectrum.

74. Our next concern relates to any unintended consequences that may result from this potential policy change, especially as it relates to existing and future financial and regulatory relationships and any new claims or conflicts that may arise. It appears that one of the main conceptual differences between the current limits on the scope of permissible security interests and our proposal is that a security interest in a