

commenters support such a sunset period, we seek comment regarding the appropriate length of the sunset period.

83. We also ask commenters for additional suggestions regarding how we may modify our cellular cross-interest rule to promote investment in rural areas while retaining adequate competitive safeguards. For example, should we eliminate the cellular cross-interest restriction for all RSAs where the ownership interest being transferred, assigned or acquired is not a controlling interest (*i.e.*, where the interest is a non-controlling interest and where the transaction otherwise would not require prior FCC approval)? We ask parties to focus their comments on the effect of the cross-interest rule on licensees' acquisition of adequate capital in these areas. Commenters supporting our proposal should identify and discuss specific past instances in which they have had difficulty obtaining financing in rural areas due to the cellular cross-interest rule. We also request parties to provide examples of the extent to which the waiver process has deterred or prevented acquisition of capital in a rural market(s). We seek specific market data and historical examples to assist our public interest determination of the extent to which application of the cellular cross-interest rule in RSAs impedes market forces that drive development in these rural and underserved areas.

84. We also seek comment on whether extension of the case-by-case review, as established in the *Spectrum Cap Sunset Order*, will promote investment and is sufficient to safeguard competition in RSAs with more than three competitors. Although we recognize the role that the cellular cross-interest rule has provided in the past against the possibility of significant additional consolidation of cellular providers in rural areas, we ask whether the public interest may be better served by the benefits of pure case-by-case review. In the *Spectrum Cap Sunset Order*, the Commission concluded that case-by-case review under section 310(d) of the Act, properly performed and with appropriate enforcement mechanisms, allows greater regulatory flexibility and greater attention to the actual circumstances of a particular transaction, thus promoting economic efficiency by reducing the possibility both of approving secondary market transactions that are not in the public interest and of impeding transactions that are actually in the public interest. In the markets still covered by the cellular cross-interest rule, for example, the rule prevents the two cellular licensees from merging regardless of the

competitive circumstances in a given market, but does not prevent one cellular licensee from merging with a PCS licensee, even though the competitive effect of both transactions might be very similar. We seek comment on whether this inequity may distort the market in any area in which more than just the two cellular licensees are operating and whether the better approach to safeguarding competition is to take account of the particular circumstances of each market through case-by-case competitive review.

### G. Infrastructure Sharing

#### 1. Background

85. Both in the United States (U.S.) and the European Union (EU), commercial wireless providers have sought to minimize their capital expenditures and maximize their coverage by engaging in joint ventures with other providers to share infrastructure costs. Such arrangements are generally known as "infrastructure sharing," and they can take place at various levels. At the most basic level is sharing of passive elements such as antennas and towers, followed by sharing of active or "intelligent" elements of the networks such as switches and nodes, followed by sharing of spectrum.

86. In the United States, several infrastructure sharing arrangements have been announced in the past two years. The providers claim that such infrastructure sharing will allow them to cover a larger geographic area at lower cost. In addition, because two or more providers share the infrastructure, these arrangements may allow for more providers to serve a market than otherwise would be possible. Finally, to the extent that these arrangements make it possible for providers to cover a larger geographic area, and thus serve a greater number of consumers, they may provide an important public interest benefit.

87. Infrastructure sharing arrangements that do not involve a transfer of control, as defined under section 310(d), do not require Commission review. Infrastructure sharing arrangements that do involve a transfer of control, like other arrangements, require Commission review. Also, while previous infrastructure sharing arrangements have not required Commission review, the Commission has taken no regulatory action to either promote or create incentives for parties to enter into such arrangements.

88. As compared to the U.S. market, infrastructure sharing has received more attention from regulators in the EU and

its Member States. Within the past year, the European Commission announced a preliminary conclusion to favorably view two agreements for the provision of 3G services, one in the United Kingdom and one in Germany. The European Commission noted that these arrangements should allow for faster rollout of service and greater coverage, especially in remote and rural areas.

#### 2. Discussion

89. As noted earlier, because of the lower population density and smaller customer base found in rural areas, the economically efficient number of providers for these markets will be fewer than that for urban markets. Because infrastructure sharing helps lower capital costs and thus extend the coverage of providers, this practice may be particularly important in rural areas, for which geographic coverage is especially important. In addition, because infrastructure sharing may make it possible for more providers to operate in a given area, this practice again is important for rural markets that tend to have fewer competitors.

90. We continue to believe that, under certain circumstances, licensees should be able to engage in infrastructure sharing in order to further promote service in these markets. Thus, for infrastructure sharing in rural areas that involve no transfer of control, as defined by section 310(d), there are no requirements for Commission pre-clearance. For infrastructure sharing arrangements in rural areas that involve a transfer of control, we will maintain section 310(d) review. We note that in the *Secondary Markets* proceeding we have significantly streamlined the transfer of control and assignment process, and we inquire as to whether there are other steps we should consider to further streamline this process.

91. We seek comment on the extent to which infrastructure sharing may promote service in rural markets. Are there particular types of infrastructure sharing arrangements that may be most effective in promoting this goal? Are there specific policy steps we should take as a regulatory matter to promote infrastructure sharing arrangements that, in turn, promote service in rural areas? We encourage comments from providers involved in infrastructure sharing in the U.S. and EU as well as those familiar with such arrangements.

92. We also seek comment on the potential costs and benefits of this proposed policy. With regard to the potential benefits, we note that comments by European Commission regulators in support of such arrangements in the E.U. generally focus