

leasing arrangements permits additional spectrum users to gain access to spectrum. Furthermore, several commenters in the *Secondary Markets* proceeding specifically indicated that facilitating leasing arrangements would increase service offerings to rural customers by enabling rural telephone companies and others to access underutilized spectrum. We seek comment on whether there is a problem for potential providers of RRS or BETRS in accessing spectrum and if so, whether parties feel secondary markets will provide the appropriate means for access to the desired spectrum.

100. We are also interested in determining if the Commission's current rules and policies for RRS and BETRS are limiting factors towards a more expansive use of these services. We note that currently there is an eligibility restriction for BETRS that restricts the issuance of a license to only those entities that receive state approval to provide basic exchange telephone service. We believe that this rule may be unnecessary and may serve as a potential regulatory hurdle towards a more rapid and efficient use of the BETRS spectrum. We therefore propose to remove the eligibility restrictions contained within section 22.702 of our rules regarding state approval prior to the issuance of a BETRS license. Furthermore, the current service rules for RRS and BETRS provides that new licenses are issued on a secondary, non-interfering basis. In a Petition for Rulemaking filed by several parties, which eventually lead to the establishment of BETRS, a request was made to provide 2 MHz of dedicated spectrum for the use of BETRS. At the time, we determined that the demand for BETRS was not clear and therefore made the decision not to provide discrete spectrum for the use of BETRS. However, we indicated that if the spectrum that was made available for BETRS proved to be insufficient at a future date, we would revisit the problem at that time. We note that in the *Rural NOI* we sought comment on how we might revise existing RRS and BETRS rules to further facilitate the provision of wireless services to rural areas. We did not receive any comments that specifically addressed the need to revise RRS or BETRS rules. We seek comment on our proposal to remove the eligibility restrictions in section 22.702 of the Commission's rules for BETRS licensees. Based on the current RRS and BETRS licensing scheme, we seek comment on whether there is a need for us to expand the secondary status for RRS and BETRS to other spectrum

bands in order to facilitate and encourage construction in rural areas. If so, what spectrum bands could RRS and BETRS be expanded to include? If additional spectrum should be designated on a primary basis for BETRS, what band(s) would be viable? How much spectrum would be needed? Is there existing equipment or equipment that can be manufactured and made readily available for use in the band(s)?

101. As a final matter, and in light of the Commission's policies towards a more flexible-use, market-based approach to spectrum management, we believe it is appropriate at this time to determine if the current designation of RRS and BETRS as fixed services creates disincentives towards a more expansive use of the spectrum. We seek comment on whether providing additional flexibility to allow other types of service offerings using RRS and BETRS spectrum on a secondary basis would provide the proper incentives for these spectrum bands to be more fully utilized in providing telecommunications services to rural areas. If a more flexible use policy were created for RRS and BETRS, what considerations must the Commission consider in adopting rules and policies to facilitate such flexible use?

III. Procedural Matters

A. *Ex Parte* Rules—Permit-But-Disclose Proceeding

102. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

103. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in the *NPRM*. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the *NPRM*

104. In this *NPRM*, we continue to examine ways of amending our regulations and policies governing the electromagnetic spectrum and the facilities-based commercial and private wireless services that rely on spectrum, in order to promote the rapid and efficient deployment of these services in rural areas. This *NPRM* builds upon the work of our Notice of Inquiry, in which we sought comment on how we could modify our policies to encourage the provision of wireless services in rural areas. This *NPRM* also draws upon the efforts and recommendations of the Spectrum Policy Task Force, which identified and evaluated potential changes in our spectrum policy that would increase public benefits from spectrum-based services. This *NPRM* proposes several ways in which the Commission can modify and improve its regulations and policies in order to promote such wireless service within rural areas while simultaneously removing any disincentives or other barriers to construction and operation in rural areas.

105. As a complement to the measures the Commission has already taken, we seek to minimize regulatory costs and eliminate unnecessary regulatory barriers to the deployment of spectrum-based services in rural areas. As reflected in the proposals set forth in this *NPRM*, we believe there are additional spectrum policy initiatives the Commission can adopt to reduce the overall cost of regulation and increase flexibility in a manner that will facilitate access, capital formation, build-out and coverage in rural areas. Specifically, in this *NPRM*, we seek comment on the appropriate definition of what constitutes a "rural area" for the purposes of this proceeding. We also seek comment on how to define "built" spectrum and we inquire as to whether the most efficient approach may be to rely on providers' filings of their construction notifications, an approach used with broadband PCS. Notably, we propose that spectrum in rural areas that is leased by a licensee, and for which the lessee meets the performance requirements that are applicable to the licensee, should be construed as "used" for the purposes of this proceeding and any performance requirements we adopt. Furthermore, we seek comment on ways the Commission could modify its regulations pertaining to unused spectrum.