

and access models that take this new technological potential into account.

17. We seek comment here on additional steps that the Commission can take to implement spectrum licensing policies that eliminate unnecessary regulatory barriers and promote the potential public benefits made possible by this increasingly dynamic and innovative nature of spectrum use. We agree with the *Spectrum Policy Task Force Report* that these technological advances potentially provide several answers to current and future spectrum policy challenges. In particular, they make possible more intensive and efficient use of spectrum. They also allow operators to take advantage of the time dimension of the radio spectrum, which could enable additional access to spectrum for more users and services.

18. We also request comment on the recommendations made in the *Spectrum Policy Task Force Report* regarding Commission policies on access to spectrum as provided by opportunistic devices in currently licensed bands. In particular, we propose to move forward with the Task Force's general recommendation that, with regard to currently licensed bands, the Commission focus on advancing and improving a secondary markets approach to access to spectrum by opportunistic devices during the near term. Under this approach, the Commission initially would look to promote secondary markets through multiple steps, the first of which we are taking in the *Report and Order*.

19. The *Spectrum Policy Task Force Report* noted that a secondary markets approach did not necessarily require that the prospective opportunistic user negotiate individually with each affected licensee. It suggested that other mechanisms, such as band managers, frequency coordinators, and other intermediaries such as clearinghouses, could possibly manage the secondary uses on licensees' behalf. We seek comment on the possible use of any or all of these mechanisms, and how any such tool should be structured by the Commission.

20. Finally, we seek comment on whether the policies and procedures adopted in the *Report and Order* provide sufficient flexibility for dynamic leasing arrangements involving opportunistic uses of currently licensed spectrum bands. If not, we seek comment on additional steps the Commission should take consistent with our statutory authority. To facilitate secondary access by opportunistic devices, should the Commission more exhaustively define the nature of the

rights embodied in "exclusive use" licenses in the Wireless Radio Services?

*B. Forbearance From Individualized Prior Commission Approval for Certain Categories of Spectrum Leases and Transfers of Control/License Assignments*

21. The *Report and Order* takes significant steps to facilitate certain categories of spectrum leasing and to reduce the regulatory process requirements that can delay the timely implementation of business arrangements, increase transaction costs, and present potential regulatory uncertainty. Despite these advancements, however, we are concerned that even the streamlined regulatory process we have established for *de facto* transfer leasing may raise unnecessary hurdles for transactions that we could find, as a categorical determination, are consistent with the public interest.

22. Similarly, we have adopted policies in the *Report and Order* that should significantly streamline and facilitate the regulatory process applicable to transfers of control and license assignments in a significant number of our Wireless Radio Services. Nevertheless, we continue to consider additional actions we might take to minimize any unnecessary regulatory impediments to the effectuation of marketplace transactions while ensuring that we satisfy our statutory obligations relevant to license transfers of control and assignments.

23. The record before us suggests the need to explore in greater detail how to grant increased flexibility to parties to design leasing arrangements that are responsive to their business needs and to implement them without facing unnecessary regulatory delays. We also want to assess whether the public interest objectives and policy goals that underpin any revised approach to *de facto* transfer leasing that we may adopt are also applicable to some categories of outright license transfers and assignments. As part of this examination, we will assess whether, in light of all relevant statutory and public interest factors, we should strive to provide some parity in treatment between lease arrangements that involve a transfer of *de facto* control and full assignment of licenses and transfers of licensee control. This review thus must assess the possible applicability of forbearance or other streamlining steps to transaction applications.

24. *Forbearance standard.* Section 10 of the Communications Act authorizes the Commission to forbear from applying any provision of the

Communications Act with respect to telecommunications carriers or telecommunications services (or a particular class thereof), provided a three-pronged test is satisfied. Wireless radio service licensees that are telecommunications carriers, as defined by the Act, or otherwise provide commercial mobile radio services (CMRS) and common carrier-based services, fall within the scope of the Commission's statutory forbearance authority. The forbearance proposals we describe with respect to spectrum leasing thus would be applicable only to entities and services meeting this test. Regulatory processing of leasing transactions involving spectrum and authorizations restricted to private use would not be encompassed within any forbearance-based structure we may adopt.

25. In determining whether forbearance from the prior approval processes is consistent with the public interest, the Commission must consider whether forbearance will promote competitive market conditions, including whether it will enhance competition among telecommunications service providers. If the Commission determines that forbearance will promote competition among providers of telecommunications services, that determination may be the basis for finding that forbearance is in the public interest (one of the three prongs of the test).

*1. Forbearance With Respect to Certain Spectrum Leasing Arrangements*

26. We seek comment on whether to forbear from individual prior review and approval by the Commission for certain categories of leasing arrangements involving a transfer of *de facto* control that would not raise any public interest concerns. We propose particular benchmarks or elements for leasing transactions (related to the public interest concerns we generally consider in evaluating transactions involving a transfer of *de jure* and/or *de facto* control) that would, if satisfied, allow spectrum lease agreements to be handled under the forbearance model we propose in this *Further NPRM*. We also seek comment on appropriate notification requirements for leases that would not be subject to individualized prior approval under this proposal.

*a. Elements of Leasing Transactions That Would Not Require Prior Commission Approval*

27. We propose to forbear from the requirements of sections 308, 309, and 310(d) of the Communications Act to the extent necessary to permit us to