

process notification filings regarding leases involving a transfer of *de facto* control that satisfy the conditions enunciated in this section without 30 days prior public notice and without prior Commission review and consent. Rather, as discussed below, the parties to the leasing arrangement would be required to file a notification with the Commission within 14 days of execution of the lease. Responsibility for compliance with Commission rules, resolving interference issues, and making Commission filings would shift to the lessee, in the same manner as described under the *de facto* transfer leasing model in the Report and Order above.

28. *The lessee must satisfy applicable eligibility and use restrictions associated with the leased spectrum.* For a leasing agreement to be eligible for processing pursuant to this forbearance proposal, the lessee would be required to meet any applicable eligibility limitations and comply with any use restrictions associated with the spectrum it plans to lease. A lessee would also have to meet our basic qualification requirements for holding an authorization.

29. We seek comment on this proposed element. We note that inclusion of this element does not stand as an absolute bar to a lease contemplating spectrum usage that is inconsistent with applicable regulations but only serves to prevent such a lease proposal from being implemented without prior public notice or Commission review. We believe that, at present, such proposals should be subject to Commission review and evaluation before the lease is implemented. Is there any way to permit greater flexibility in lessee use of spectrum with forbearance-based notification without undermining other policies adopted by the Commission? Do retaining use and eligibility restrictions for lessees as a condition of permissible forbearance processing serve as a significant barrier to implementation of spectrum leases?

30. While we propose to require a lessee to meet any eligibility limitations applicable to the licensee from which it is leasing spectrum, we request comment about how to apply this objective, if we adopt it, in the context of licensees that are designated entities and/or entrepreneurs. Should we require a lessee to be eligible for the same level of competitive bidding benefits, such as bidding credits, as the licensee from which it is leasing? Should we require only that the lessee be qualified to hold the license? If so, do we impose unjust enrichment obligations on a lessee that is qualified

for a lesser level of competitive bidding benefits? How do we ensure that the Commission has an opportunity to calculate and collect any unjust enrichment payments?

31. *The lessee must comply with the foreign ownership provisions applicable to Commission licensees.* In order for parties to a lease to avail themselves of forbearance processing as discussed in this *Further NPRM*, we first propose that, for a lease involving any radio authorization, the lessee not be a foreign government or the representative thereof. This limitation is derived from section 310(a), which is an absolute ban on foreign government holding of Commission radio authorizations. Second, for leases involving common carrier radio authorizations, we propose that the lessee must meet the requirements of sections 310(b)(1) through (3), *i.e.*, it must not be an alien or a representative thereof, a corporation organized under the laws of any foreign government, or have more than 20 percent direct foreign ownership. Third, we propose that, as a condition of eligibility for forbearance, the lessee must not have more than 25 percent indirect foreign ownership, or must have previously obtained a declaratory ruling from the Commission in advance of entering into the subject lease that its lease of the spectrum at issue is consistent with the Commission's foreign ownership policies.

32. We request parties to address the merits of applying the proposed foreign ownership conditions. Do the conditions ensure that we are meeting our obligations to enforce and apply sections 310(a) and (b) in the context of spectrum leases that we allow to proceed without individualized prior Commission approval of a lease arrangement? What risk exists that parties could attempt to escape the applicability of the foreign ownership limitations by implementing a lease following only notification to the Commission? Conversely, is this element too strict in terms of applying our foreign ownership policies? Is there any way we can expand the scope of permissible indirect foreign ownership in lessees where we are not individually reviewing the application?

33. We note that, as part of our foreign ownership review process, we coordinate with Executive Branch agencies to ensure that the level and identity of the foreign ownership does not present any concerns with respect to national security, law enforcement, foreign policy, or trade policy. We seek comment on whether our proposed foreign ownership conditions for forbearance raise any questions

concerning enforcement of national security, law enforcement, foreign policy, or trade policy by Executive Branch agencies. What steps do we need to take to ensure that national security and other concerns addressed by Executive Branch agencies are satisfactorily handled? We note that no Executive Branch agencies provided comments for the record on this issue and particularly seek their input at this time.

34. *The spectrum lease arrangement must not raise any competitive concerns.* The Commission acknowledges in the *Report and Order* the potential competitive effects that may be associated with a spectrum lease. We seek to clarify under what conditions leases would not pose any significant risk to our competition policies such that we would allow these transactions to proceed without individual Commission review and approval. We note that to the extent we can create more certainty for the parties involved in transactions, we are more likely to promote efficient secondary markets.

35. The benchmarks under which we would allow spectrum leases to proceed without prior Commission approval must consider the competitive effects on both the input and output markets. The input market looks at the spectrum and the number of licensees in an area, while the output market concerns itself with wireless service and the number of entities actually providing service. If concentration increases in the output market (*i.e.*, the number of service providers decreases) as a result of a transaction, there is a potential that higher prices may be charged to consumers. If concentration in the input market increases (*i.e.*, fewer licensees), then there is a potential that higher prices will be charged to the actual providers of service for use of the spectrum, also leading to higher prices to consumers.

36. For the output market, we look at the effect on service providers. We propose that, in order to be eligible for forbearance processing under this proposal, a spectrum lease arrangement must not result in the loss of service in any geographic area by an independent, facilities-based CMRS provider involved in the transaction. We note that this requirement should impose no burden on spectrum licensees that provide service in a given market and that simply wish to lease unused portions of their spectrum. Nor should this requirement burden licensees that have not constructed and are therefore not providing service. The only effect of this condition should be on a licensee that