

is providing service and that, as a result of a contemplated lease, would cease to provide such service. We decline, at this time, to forbear from review of this latter class of leases. We request comment whether this is an appropriate safe harbor or whether some other benchmark would more effectively serve the public interest while ensuring that spectrum lease applications processed pursuant to forbearance-based procedures do not pose unacceptable threats to our competition policies. If we adopt this or another safe harbor, we request comment whether we should require the licensee, the lessee, or both to certify that the lease would not result in the loss of an existing, independent competitor in the geographic area encompassed within the lease.

37. For the input market, we consider the potential competitive effects by looking at the amount of spectrum held by the parties involved in the lease. For leases involving a transfer of *de facto* control, we propose to consider the lessee as having influence over the spectrum encompassed within the subject lease agreement. In the case of *de facto* transfer leasing, the lessee is gaining sufficient control of the spectrum to be able to affect competition in the geographic area encompassed by the lease. Although the Commission has eliminated the spectrum cap it applied to certain CMRS offerings and replaced it with a case-by-case examination of the competitive effects of a proposed transaction, we believe that a defined, readily understood benchmark is necessary in this context. Identifying a readily ascertainable safe harbor provides certainty to parties. We request commenters to provide us with recommendations for a safe harbor definition that satisfies these objectives, including a discussion of how the proposed safe harbor level will ensure that no significant competitive issues are posed by a particular lease transaction.

38. We note that our prior spectrum cap addressed only CMRS offerings, which are a subset of the wireless services to which we are proposing to extend the opportunity to implement spectrum leases without advance individualized review by the Commission. As a supplement to or replacement of a defined CMRS benchmark, we could specify that a lessee have an attributable interest in no more than a specified amount of common carrier wireless spectrum in the geographic market. We request commenters endorsing a limitation based on total common carrier wireless spectrum to discuss the appropriate

level and the justification for their recommendation.

39. We request comment on these proposals for ensuring that spectrum leases for which we no longer require prior individualized review and approval do not raise competitive issues. With regard to competitive issues, do we need to be concerned only about CMRS spectrum? Are there any individual services covered by our proposals in this *Further NPRM* for which we need to be concerned about potential anticompetitive effects resulting from aggregation of spectrum? Are there other groups of services (similar to the services previously covered by the CMRS spectrum cap—PCS, cellular, and certain SMR spectrum) for which we should establish a total spectrum aggregation benchmark in order to prevent any adverse competitive effects stemming from spectrum leases implemented without prior Commission approval? How should we account for leases of private spectrum in this competitive benchmark setting? How should we determine what spectrum is attributable to a particular entity for competition analysis purposes? Should we consider a test based on “significant influence” over the spectrum?

40. When combined with our benchmark protecting the level of competition in the output market, is a benchmark tied to level of spectrum aggregation, whether for CMRS only, other sets of services, or common carrier wireless services generally, an appropriate means for enforcing our competition policies in the context of spectrum leases that may proceed without prior Commission review and approval? We seek to ensure that any benchmarks we define are not too restrictive and thus likely to impede marketplace arrangements that do not raise any competitive concerns. Conversely, we wish to avoid benchmark levels that present unacceptable levels of competitive risk. Is there a better way to define a competitive benchmark?

41. *Addressing any other public interest concerns associated with spectrum leases implemented pursuant to forbearance procedures.* Finally, we seek comment on whether spectrum leasing arrangements involving transfers of *de facto* control may raise any other public interest concerns that we need to address in defining those types of leases that could be implemented without individualized prior approval under an exercise of our forbearance authority. We request that commenters identifying any other relevant public interest considerations discuss whether those

concerns can be addressed by some form of benchmark or safe harbor, and what that benchmark or safe harbor might be.

42. Are these proposed prerequisites to spectrum leasing sufficiently clear to permit licensees and lessees to readily comply with them and to provide the information required by a modified Form 603 that we would employ for purposes of notifying us of a spectrum lease? Are there any steps we can take to simplify any of these benchmarks and to facilitate licensee/lessee compliance therewith?

43. Under the proposed forbearance model, parties would be able to implement a lease after filing the required notification and without any prior Commission review necessarily having occurred. The Commission and members of the public would be allowed to review the notification and the Commission could request additional information from the parties if so warranted. As a result, could forbearance processing undercut our ability to enforce our policies? What actions can and should we take in response to a spectrum lease that is improperly implemented under our forbearance processing proposal?

b. Notification

44. As part of our forbearance proposal, we propose that the parties to a spectrum lease arrangement that qualifies for forbearance be required to file, within 14 days of executing the lease, a notification with the Commission similar to that filed by parties to a *pro forma* assignment or transfer of control, including the date on which the parties expect to put the lease into effect. The notifications would be placed on an informational public notice on a weekly basis, and would be “deemed approved” as of the date of the public notice. We seek comment on this proposal as well as any other proposal that commenters might suggest.

45. We note that by placing the notifications on public notice, we provide members of the public with the opportunity to scrutinize such filings, similar to our handling of notifications concerning *pro forma* transfers of control and assignment of licenses. Any interested party would be entitled, consistent with our rules and policies concerning standing, to file a petition for reconsideration within 30 days of the date of that informational public notice. Similarly, Commission staff would be able to reconsider the grant on its own motion within 30 days of the public notice date, and the Commission would be able to reconsider the grant on