

non-telecommunications services and non-telecommunications carriers? We note that we seek comment only with respect to services covered by the *Report and Order* and services that might be added pursuant to this *Further NPRM*.

*C. Extending the Policies Adopted in the Report and Order to Additional Spectrum-Based Services*

62. In the *Report and Order*, we extend our new leasing policies to most Wireless Radio Services in which licensees hold exclusive rights to use the licensed spectrum. We wish to consider extending our leasing policies, as adopted in the *Report and Order* and as they may be modified based on this *Further NPRM*, to additional spectrum-based services. In light of our conclusions about the public interest benefits of spectrum leasing in the services for which we have adopted spectrum leasing policies, we consider in this *Further NPRM* whether we should extend the policies adopted in the *Report and Order* to some of the radio services that we have excluded to date.

63. *Public safety services.* Our Public Safety Radio Pool is regulated pursuant to part 90 of our rules. State and local jurisdictions rely upon our Public Safety Radio Pool to carry out their public safety obligations. The pool encompasses the licensing of the radio communications of state and local governmental entities and certain other categories of activities. Communications transmitted over these facilities may include communications among members of a firefighting team, directions to an ambulance crew, and coordination among different police and fire agencies responding to a regional crisis. In many instances, such public safety communications are highly time-critical, but episodic in nature.

64. We seek comment here on whether to permit licensees in the Public Safety Radio Pool to lease access rights to their licensed spectrum. Initially, we note that any such leasing would be a voluntary transaction by a public safety licensee, and not the use of this spectrum by third parties without consent by that licensee. We also recognize that public safety licensees require near-instant access to their full spectrum capacity, when demand surges due to emergencies. Using traditional technology, the only way to guarantee such access has been full-time dedicated spectrum. New technologies, however, may allow both ultra-reliable near-instant access by public safety licensees and use by other licensees at times of low public safety demand. We note that

the Spectrum Policy Task Force recommended that the Commission consider permitting public safety licensees to lease their spectrum usage rights under conditions in which they could immediately reclaim and use their spectrum in such emergencies. Some have proposed to allow public safety licensees to lease their spectrum to others on an interruptible basis, whereby third parties could lease under the condition that they would immediately cease using the spectrum if the public safety licensees exercised their right to preempt such leased use. Under these circumstances, the public safety entity would lose no access to use of its spectrum, which it nevertheless could also make available at certain times to third parties. We intend to begin a proceeding later this year on cognitive radio technologies, including those that would enable interruptible spectrum leasing. That proceeding will consider the state of technology as well as changes to the Commission's technical rules, policies, procedures, or practices that could facilitate the economic development of such technologies.

65. In light of this, we request that commenters evaluate whether we should permit public safety licensees to lease their spectrum to third parties. Generally, we ask whether leasing in this spectrum will further the public interest, for instance, by resulting in more efficient use of the public safety spectrum, by providing another avenue for multiple public safety entities to use the same spectrum, and/or of providing financial resources to public safety licensees. Should we permit public safety licensees to lease to entities that are not eligible to obtain a public safety authorization, which would provide for a larger number of possible arrangements? If we permit leasing of public safety radio pool spectrum, should it be subject to any special rules in light of the importance of ensuring adequate access to spectrum for public safety purposes? Parties supporting leasing in the public safety frequencies should identify any elements of such arrangements that the Commission should consider in adopting policies.

66. We also seek comment on the significance, if any, of the 1997 Balanced Budget Act for spectrum leasing of 700 MHz public safety spectrum. In that Act, Congress directed the Commission to reallocate 24 MHz of the spectrum recovered from TV channels 60-69 for public safety services, and the Commission did so shortly thereafter. Congress specifically defined the "public safety services" that are intended to benefit from this

spectrum allocation. Section 337(f) of the Communications Act defines the term "public safety services" as services: "(A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided—(i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider."

67. We seek comment on whether this allocation of spectrum under section 337(a)(1) affects the ability of licensees in the Public Safety 700 MHz band to lease this spectrum for use that does not meet the definition of public safety services. We also seek comment on the significance for spectrum leasing, if any, of the statutory provision that permits nongovernmental organizations to be authorized as licensees of this spectrum by the relevant governmental entities. Because we recently adopted the same eligibility framework for the 50 MHz of spectrum at 4940-4990 MHz that is designated in support of public safety (the 4.9 GHz band), we pose the same questions relative to that band.

68. We also note that certain portions of the 700 MHz public safety spectrum are subject to special licensing regimes under our rules. For instance, 2.4 MHz of the Public Safety 700 MHz band is licensed to each state as a geographic area "State License." The Commission adopted the State License structure after concluding that it would allow, but not require, each state to plan and develop shared, wide-area systems under a substantially streamlined licensing process. In this regard, the Commission revised the rules to allow state licensees to authorize appropriate public safety agencies, including federal entities, within a state and its political subdivisions to use the spectrum pursuant to the state licensee's authorization. We seek comment on the significance, if any, of this regime to our consideration of whether to permit licensees to lease this spectrum.

69. Similarly, we point out that a total of 12.5 MHz of the Public Safety 700 MHz band (the "General Use" channels), as well as 6 MHz of public safety spectrum at 821-824/866-869 MHz, is administered by regional or state-level planning committees. We seek comment on whether and/or how leasing would work for spectrum governed by these planning committees and processes.

70. Section 337(c) of the Communications Act provides that the Commission must waive any rules