

(other than its regulations regarding harmful interference) necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings. First, the applicant must demonstrate that no other spectrum allocated for public safety use is immediately available. Second, the public safety entity must demonstrate that its use of the requested spectrum will not cause harmful interference to other spectrum users entitled to protection. Third, it must show that public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question. Fourth, the applicant must show that the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue. Finally, the applicant must demonstrate that grant of the application is consistent with the public interest. Waivers granted under section 337(c) thus are intended to meet a public safety entity's immediate need for spectrum. Can we extend the spectrum leasing policies adopted in the *Report and Order* to licenses granted under section 337(c)? Are there special considerations we should take into account in making this determination? Are there any additional limits that should be imposed on public safety licensees granted licenses under this section in entering into spectrum leasing arrangements?

71. Finally, some public safety spectrum is specifically designated for "interoperability," "mutual aid," or similar activities. Given the importance of this spectrum in the event of significant disaster or other activity requiring communication and coordination, are there any unique factors we should take into account in considering whether, and if so how, to permit licensees to voluntarily lease this spectrum?

72. *Various Private Wireless and Personal Radio Services.* The Private Wireless Services include spectrum licensed under parts 80 (Maritime Services), 87 (Aviation Services), and 97 (Amateur Radio Service). The Personal Radio Services include spectrum licensed under part 95 of our rules. We use a variety of methods to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. In assessing whether our spectrum leasing policies should be extended to any of these services, the nature of the authorization

granted to users of the covered spectrum must be taken into account.

73. Some services encompassed within parts 80, 87, and 95 are licensed by rule. The rules governing these services indicate who may operate in the particular services and constitute the authorization to operate; no individual licenses are issued by the Commission. Specifically, users of the Wireless Medical Telemetry Service, Medical Implant Communications Service, Family Radio Service, Radio Control Radio Service, Citizens Band Service, Low Power Radio Service, and Multi-Use Radio Service do not receive an individualized license to cover operation. Given this licensing approach, we query whether it makes sense to extend our spectrum leasing policies to any services where licenses are issued by rule. We request any parties addressing this issue to discuss the legal and practical ramifications of their position, as well as whether spectrum leasing in such services would further the public interest.

74. In other private and personal wireless services, users have access to spectrum because they have passed a testing requirement. Upon successful completion of the required testing, users have the privilege of using the spectrum pursuant to an operator license. Moreover, these operators generally are not entitled to exclusive access to spectrum but instead must share access to the spectrum with all operators who have successfully completed the exam requirements.

75. Indeed, in some cases, the operations in these services are not governed by the issuance of a Commission license. We also note that in many of these services, stations do not have a fixed transmitting location. We point out that, for many of the services authorized and regulated under these parts, a user does not have authority to transfer or assign an authorization or license. Finally, spectrum throughout these rule parts is subject to shared, not exclusive, use.

76. These factors potentially present significantly different issues in considering whether spectrum leasing is meaningful and/or beneficial in these services than does spectrum leasing of exclusively licensed spectrum. For instance, if a licensee has no ability to transfer or assign a license, should that individual or entity have the ability to engage in spectrum leasing under the policies adopted in this rulemaking? Accordingly, we seek comment on the special considerations potentially applicable to the implementation of spectrum leasing to any of these services. We invite comments on the

propriety of expanding the scope of our leasing policies to reach such services. Would such leasing promote more efficient spectrum use? Is spectrum leasing even a reasonable concept for some of these services? Would it further the public interest? Conversely, could it undermine the purposes of these services?

77. The *Report and Order* facilitates spectrum leasing by licensees on Industrial/Business Radio frequencies with exclusive authorizations, but requires that they lease only to entities that are also eligible for Industrial/Business Radio licensees. Should we revise our policies to permit leasing on these frequencies to commercial providers of wireless services? We seek comment on the significance, if any, to our determination on this issue of the Commission's decision in 2000 to permit such licensees to convert to commercial operation or to assign a private license to a commercial licensee in certain defined circumstances.

78. *Wireless services on shared frequencies.* In the *Report and Order*, we declined to allow leasing on shared frequencies, since parties can readily obtain their own authorizations on shared frequencies and they are not foreclosed from applying for an authorization by the existence of another licensee in the same geographic area. In light of our proposals in this *Further NPRM* to expand spectrum leasing and to take other steps to promote secondary markets, we wish to give further consideration to the possible value and implementation of spectrum leasing pursuant to authorizations involving shared frequencies. It might be possible, for example, for a group of licensees operating on the same frequency on a shared basis to cooperate in leasing spectrum to another entity. We recognize that leasing on shared frequencies may raise different implementation issues than leasing pursuant to an authorization involving the exclusive use of a block of frequencies in a particular geographic area. We welcome comments on the feasibility and possible public interest benefits of leasing involving shared frequencies. To the extent commenters take a position on this issue, we request that they address any implementation issues or other considerations that might be unique to this type of leasing. We also ask commenters whether permitting leasing on such spectrum would defeat the purpose of having shared spectrum available to a number of potential users as licensees or would in fact promote achievement of such goals.