

79. *Non-multilateration LMS.* Non-multilateration LMS systems, regulated under part 90, transmit data to and from objects passing through particular locations (e.g., automated tolls, monitoring of railway cars), and are licensed on a site-by-site basis, except that municipalities or other governmental operations may file for a non-multilateration license covering an Economic Area. Should the Commission extend its spectrum leasing rules to non-multilateration LMS? Given the nature of the operations and in light of the shared spectrum usage in this service, would spectrum leasing potentially be of benefit in this service?

80. *Instructional Television Fixed Service and Multipoint Distribution Service.* These services currently are regulated under parts 74 and 21, respectively. Our rules currently allow ITFS licensees to lease their excess channel capacity to others. Specifically, an ITFS licensee may lease up to 95 percent of its channel capacity for non-educational programming, consistent with policies unique to this leasing environment. We recently instituted a comprehensive review of the service rules relating to MDS and ITFS. Among other issues, we sought comment on whether there are any circumstances under which we should restrict or require leasing in order to ensure that access to spectrum is not unduly limited.

81. In this proceeding, we query whether we should extend the policies developed in this docket to leasing involving ITFS and MDS licensees, which have developed with their own approach to excess capacity leasing. Should we offer leasing based on the models used in this docket as an alternative format to the licensees in this service as well? Should the leasing policies adopted in this rulemaking replace the leasing standards that have been developed on a case-by-case basis for ITFS and MDS? How does action in this proceeding fit with the issues being considered in the open rulemaking proposing to evaluate the licensing structure for ITFS and MDS? We note that the record compiled in this proceeding on this issue may be taken into account in WT Docket No. 03-66 as we overhaul the rules and policies generally applicable to ITFS and MDS.

82. *Cable Television Relay Service.* This category includes cable television relay service under part 78. Although we explicitly excluded this service from consideration in the *NPRM*, we now request comment from interested parties as to whether we should permit spectrum leasing in this service. Parties addressing this issue should discuss any

special considerations that should affect our decision whether to permit licensees voluntarily to lease this spectrum.

83. *Multichannel Video Distribution and Data Service.* Multichannel Video Distribution and Data Service (MVDDS) is regulated pursuant to subpart P of part 101. MVDDS licensees "must use spectrum in the 12.2-12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service." This service was established subsequent to the Commission's adoption of the *NPRM* in this proceeding. Although the Commission established multiple geographic service areas, the rules specifically provide that each geographic area license will be auctioned to one licensee. We request interested parties to address whether the Commission's decision to authorize only one licensee per service area in this band should affect our determination whether to permit licensees voluntarily to lease this spectrum. What would be the benefits and/or harms of extending our spectrum leasing policies to this service?

84. *700 MHz Guard Band Managers.* The part 27 Guard Band Manager Service is not included within the scope of action taken in the *Report and Order*. Should we take any action to revise the rules that govern the activities of 700 MHz guard band managers? Should such band managers be given the same opportunities as other licensees to engage in a greater range of spectrum leasing activities? Do the considerations related to interference and other operational factors affect the determination we might make with respect to leasing in the 700 MHz guard band manager frequencies?

85. *Satellite Services.* Although we decided in the *Report and Order* to make no changes in the spectrum leasing policies applicable to our satellite services at this time, we remain receptive to proposals for extending the policies we have developed in this proceeding to satellite services or considering alternative lease arrangements. Accordingly, we request parties to address whether we should take any further action in this proceeding to make spectrum leasing as defined in this proceeding available to satellite services as well in order to promote more efficient use of spectrum.

86. *Forbearance.* The forbearance provisions of section 10 apply only to telecommunication services and telecommunications carriers. Some of the licenses listed above involve

spectrum operations that do not fall within the definition of telecommunications services. Do we have any other basis under the Act pursuant to which we could adopt any of the policies set forth in the *Report and Order* or proposed in this *Further NPRM*?

87. *Extending streamlined processing of transfer and assignment applications to additional services.* The *Report and Order* applies streamlined processing rules to transfer and assignment applications involving authorizations in the services for which we adopt spectrum leasing policies. Should we expand the scope of authorizations to which this streamlined processing applies? Can we encompass non-telecommunications services and non-telecommunications carriers within this streamlined process? Does it make sense to extend streamlined application processing to transfer and assignment applications involving other services? We request commenters to document the benefits and/or harms (depending upon the position they take) associated with expanding the availability of streamlined processing of transfer and assignment applications to additional services. 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*.

*D. Application of the New De Facto Control Standard for Spectrum Leasing to Other Issues and Types of Arrangements*

88. As noted in the *Report and Order*, we are at present limiting application of our newly adopted *de facto* control standard to the leasing context. Thus, the facilities-based *Intermountain Microwave* standard for evaluating *de facto* control continues to be the prevailing standard in other regulatory contexts that call for assessment of the exercise of *de facto* control over an applicant or licensee, such as in the case of designated entity and entrepreneur eligibility and management agreements.

89. We now examine whether we should apply our new *de facto* control standard to regulatory contexts other than leasing. We seek comment on whether our conclusion that the *Intermountain Microwave* standard no longer serves the public interest in the leasing context is also relevant to our application of the standard in other contexts. Alternatively, we seek comment on whether there are policy reasons to continue using a facilities-based approach to *de facto* control analysis in other regulatory contexts. Are there contexts in which evaluating