

arrangements in which the licensee transfers *de facto* control to the lessee pursuant to streamlined approval procedures.

3. In addition, consistent with our efforts to facilitate secondary markets in spectrum by providing for streamlined approval procedures for certain spectrum leasing arrangements that involve transfers of *de facto* control, we determine to implement similar streamlined Commission approval procedures for all license assignments (whether a full or partial assignment of the license) and transfers of control in the same Wireless Radio Services covered by our newly adopted spectrum leasing policies.

#### B. Satellite Services

4. Based on the record before us, we decline to revise the rules governing fixed and mobile satellite services in this *Report and Order*. We find that the current market for transponder leasing and access to unused spectrum allocated to satellite services through Special Temporary Authority appears to be working well.

## II. Background

5. In November 2000, the Commission concurrently adopted the *Policy Statement* and the *Notice of Proposed Rulemaking (NPRM)*, 65 FR 81475 (December 26, 2000), in this proceeding regarding secondary markets in spectrum usage rights. The *Policy Statement* enunciated general goals and principles for the further development of those secondary markets, while the *NPRM* proposed concrete steps the Commission might take to implement such policies with respect to Wireless Radio Services and Satellite Services. Thirty-seven parties commented on the proposals set forth in the *NPRM*, and twenty-one filed reply comments.

6. In 2002, the Commission's staff-level Spectrum Policy Task Force undertook a comprehensive review of spectrum policy. In examining 90 years of spectrum policy, the Task Force sought to assist the Commission in developing policies that are more responsive to the consumer-driven evolution of new wireless technologies, devices, and services. The findings and recommendations submitted to the Commission in November 2002 in the *Spectrum Policy Task Force Report* addressed many issues relevant to the promotion of secondary markets in spectrum usage rights.

## III. Report and Order

### A. Spectrum Leasing Arrangements in Wireless Radio Services

#### 1. Facilitating the Use of Spectrum Leasing Will Further the Public Interest

7. In this *Report and Order*, we find that revising and clarifying our policies and rules to promote the use of a wide array of spectrum leasing arrangements will serve the public interest. Consistent with the goals articulated in the *NPRM*, we grant those licensees holding exclusive use licenses in the Wireless Radio Services identified in this *Report and Order* the right to lease any or all of their spectrum usage rights (*i.e.*, in any amount of spectrum, in any geographic area covered by the license, and for any period of time during the term of the license) to third party spectrum lessees pursuant to the policies and procedures enunciated herein. We also permit these leasing arrangements to be renewable, contingent on renewal of the underlying license authorization, and will allow certain types of subleasing provided that specified conditions are met.

8. We establish a revised *de facto* transfer of control standard for leasing in the Wireless Radio Services in order to better accommodate the various components of the public interest that are relevant to these services and provide two options for spectrum leasing. The first option is consistent with the general approach proposed in the *NPRM*. Under this leasing option, licensees must retain *de jure* control of the license and *de facto* control of the leased spectrum (under the updated *de facto* control standard that replaces the *Intermountain Microwave* standard in the context of leasing). The licensee acts, in effect, as a "spectrum manager" with regard to leased spectrum, and remains directly and primarily responsible for ensuring that each of its lessees complies with all applicable Commission policies and rules. We also provide for a second leasing option in response to many commenters' interest in leasing policies that would permit a different, more flexible type of arrangement than proposed in the *NPRM*. Under this second leasing option, licensees are permitted to transfer *de facto* control of the leased spectrum, and associated responsibilities, to spectrum lessees for the term of the lease. In this "*de facto* transfer" leasing, spectrum lessees will be held directly and primarily responsible for compliance with applicable policies and rules.

#### 2. Revising the Section 310(d) *De Facto* Control Standard for Spectrum Leasing

9. We replace the *Intermountain Microwave* standard with a new, more flexible *de facto* control standard for spectrum leasing that better balances the statutory requirements of Section 310(d) with more recent statutory and policy changes affecting Wireless Radio Services. The *Intermountain Microwave* "facilities-based" control standard is outdated in that it unnecessarily impedes the Commission's efforts to develop flexible and efficient leasing arrangements that permit third-party access to unused or underutilized spectrum usage rights (for either short or long term). We therefore adopt a new set of criteria for determining *de facto* control based on the licensee exercising effective working control over the use of any spectrum it leases, as opposed to direct control of the facilities themselves.

#### a. Rationale for Revising the Section 310(d) *De Facto* Control Standard for Spectrum Leasing

10. We determine that, in the context of spectrum leasing, retaining the *Intermountain Microwave* standard for evaluating *de facto* control issues under section 310(d) no longer serves the public interest. Specifically, we determine that a new *de facto* control standard—one that continues to require that licensees exercise sufficient working control over the use of their leased spectrum so as to be consistent with the requirements of section 310(d), but also allows additional flexibility to licensees to enter into certain types of leasing arrangements without the need for prior Commission approval—should replace the standard set forth in *Intermountain Microwave* and its progeny.

11. By its very nature, the *Intermountain Microwave* standard imposes significant constraints on the development of these secondary markets because it restricts the ability of licensees to make spectrum available for a defined period to third-party users that would prefer to construct and use their own facilities instead of being forced to rely on the licensees' facilities and technology. The *Intermountain Microwave* standard is a "facilities-based" standard that focuses on whether the licensee exercises close working control over many different aspects of the operation of the station facilities using the licensed spectrum. Specifically, applying a six factor test, the Commission examines whether the licensee: (1) Has unfettered use of all station facilities and equipment; (2)