

controls daily operations; (3) determines and carries out the policy decisions (including preparation and filing of applications with the Commission); (4) is in charge of employment, supervision and dismissal of personnel operating the facilities; (5) is in charge of the payment of financial obligations, including expenses arising out of operations; and (6) receives the monies and profits from the operation of the facilities. In sum, the *Intermountain Microwave* standard interprets section 310(d) *de facto* control as requiring that licensees themselves exercise close working control of both the actual facilities/equipment operating the radio frequency (RF) energy and the policy decisions (e.g., business decisions) regarding use of the spectrum.

12. The *Intermountain Microwave* standard for *de facto* control, and the particular factors specified therein, are not required by section 310(d). In particular, the Act does not require a facilities-based *de facto* control standard whereby licensees are the only entities that can control the use of each facility and associated policies without Commission approval, and we conclude that such an interpretation is overly circumscribed and restrictive.

13. We conclude that the *Intermountain Microwave* standard is increasingly out of step with the flexible spectrum use policies we are adopting in the Wireless Radio Services and that we consider essential to furthering our obligations to promote the public interest in today's environment. Accordingly, we adopt a more refined interpretation of the section 310(d) *de facto* control standard in the context of spectrum leasing and today's increasingly flexible regulatory policies. This revised standard will permit licensees and spectrum users to enter into certain types of leasing arrangements, without them being deemed transfers of *de facto* control that would require prior Commission approval, so long as the licensee maintains effective working control of the leased spectrum and has the ongoing responsibility for ensuring compliance with applicable Commission policies and rules during the term of the lease.

b. Indicia of *De Facto* Control for Spectrum Leasing Arrangements

14. In the context of spectrum leasing, we no longer interpret *de facto* control under section 310(d) as requiring that the Wireless Radio Services licensees affected by this proceeding exercise close working control over, determine the services on, and set the policies affecting the station(s) operating with the spectrum licensed to them under

their authorizations. Instead, when leasing spectrum, these licensees must act as spectrum managers to ensure that the spectrum lessees comply with applicable policies and rules.

15. For all Wireless Radio Services affected in this proceeding, we establish the following two factors for interpreting whether a licensee retains *de facto* control for purposes of section 310(d) when it acts as a spectrum manager when leasing spectrum to a spectrum lessee. First, the licensee remains responsible for ensuring the lessee's compliance with the Communications Act and all applicable policies and rules directly related to the use of the spectrum. This responsibility includes maintaining reasonable operational oversight over the leased spectrum so as to ensure that the spectrum lessee complies with all applicable technical and service rules, including safety guidelines relating to radiofrequency radiation. In addition, the licensee must retain responsibility for meeting all applicable frequency coordination obligations and resolving interference-related matters, and must retain the right to inspect the lessee's operations and to terminate the lease to ensure compliance. Second, the licensee is responsible for all interactions with the Commission, including notification about the spectrum leasing arrangement and all Commission filings required under the license authorization and applicable service rules that are directly related to the use of the leased spectrum.

16. *Licensee responsibility for lessee compliance with Commission policies and rules.* Under the first factor, the licensee remains fully responsible for ensuring that its lessee's operations are in compliance with the Communications Act and all applicable policies and rules directly related to the use of the spectrum. This retention of legal and actual control of the spectrum requires the licensee to take steps through contractual provisions and actual oversight and enforcement of such provisions to ensure that the spectrum lessee operates in conformance with applicable technical and use rules governing the license authorization. In addition, this means that a licensee must maintain a reasonable degree of actual working knowledge about the lessee's activities and facilities that affect its ongoing compliance with the Commission's policies and rules. These responsibilities include: coordinating operations and modifications of the lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and

adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual lessee stations (e.g., those that require frequency coordination, submission of an Environmental Assessment under 47 CFR 1.1307, those that require international coordination, those that affect radio frequency quiet zones described in 47 CFR 1.924, or those that require notification to the Federal Aviation Administration under 47 CFR part 17); and, ensuring that the lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation (e.g., 47 CFR 1.1307(b) and related rules). Furthermore, the licensee is responsible for resolving all interference-related matters, including conflicts between its lessee and any other lessee or licensee (or authorized spectrum user). We will permit a licensee to use agents (e.g., counsel, engineering consultants) when carrying out these responsibilities, so long as the licensee continues to exercise effective control over its agents' actions as necessary.

17. Other key elements of the licensee's continuing control are that it must be able to inspect the lessee's operations and that it must retain the right to terminate the lease in the event the spectrum lessee fails to comply with the terms of the lease and/or the Commission's requirements. If the licensee or the Commission determines that there is any violation of the Commission's rules or that the lessee's system is causing harmful interference, the licensee must immediately take steps to remedy the violation, resolve the interference, suspend or terminate the operation of the system, or take other measures to prevent further harmful interference until the situation can be remedied. If the lessee refuses to resolve the interference, remedy the violation, or suspend or terminate operations, either at the direction of the licensee or by order of the Commission, the licensee must use all legal means necessary to enforce the order.

18. Licensee responsibility for interactions with the Commission, including all filings, required under the license authorization and applicable service rules directly related to the leased spectrum. Pursuant to the second factor, the licensee is required to engage in all of the licensee interactions with the Commission that are required under the applicable service rules and policies and are directly related to the use of the spectrum. As a preliminary matter, the licensee must file the necessary notification with the Commission,