

spectrum on a daily basis without direct supervision, and even if that licensee has given the third party certain enforceable rights to continue that use.

26. We have structured the new *de facto* control standard to include a set of core responsibilities (described above) that a licensee must retain, and cannot delegate to a spectrum lessee, in order to maintain a level of control over a lessee's use of the spectrum sufficient to satisfy the underlying purposes of section 310(d). These responsibilities are defined by their statutory or regulatory relevance. A licensee exercising these defined responsibilities with regard to the spectrum lessees and leased spectrum will effectively retain *de facto* control of the license under section 310(d), consistent with the public interest.

3. Wireless Radio Services Eligible for Spectrum Leasing

27. We will apply the spectrum leasing policies and procedures set forth in this *Report and Order* to all of the exclusive use licenses in the Wireless Radio Services that were included in the *NPRM* proposal. Thus, exclusive use licenses in the following services would be encompassed under the spectrum leasing procedures we adopt in this *Report and Order*: The Cellular Radiotelephone Service (part 22); the Rural Radiotelephone Service (part 22); the Offshore Radiotelephone Service (part 22); the Air-Ground Radiotelephone Service (part 22); the Paging and Radiotelephone Service (part 22); the narrowband Personal Communications Services (part 24); the broadband Personal Communications Service (part 24); the Wireless Communications Service in the 698–746 MHz band (part 27); the Wireless Communications Service in the 746–764 MHz and 776–794 MHz bands (part 27); the Wireless Communications Service in the 2305–2320 MHz and 2345–2360 MHz bands (part 27); the 220 MHz Service (excluding public safety licensees) (part 90); the Specialized Mobile Radio (SMR) Service in the 800 MHz and 900 MHz bands (including exclusive use SMR licensees in the General Category channels) (part 90); the Location and Monitoring Service (LMS) with regard to licenses for multilateration LMS systems (part 90); paging operations under part 90; the Business and Industrial/Land Transportation (B/ILT) channels (part 90) (which would include all B/ILT channels above 512 MHz and those in the 470–512 MHz band where a licensee has achieved exclusivity, but excluding B/ILT channels in the 470–512 MHz band where a licensee has not achieved

exclusivity and those channels below 470 MHz, including those licensed pursuant to 47 CFR 90.187(b)(2)(v)); the Local Multipoint Distribution Service (part 101); the 24 GHz Service (part 101); the 39 GHz Band (part 101); the Multiple Address Systems band (part 101); the Private Operational Fixed Point-to-Point Microwave Service (part 101); the Common Carrier Fixed Point-to-Point Microwave Service (part 101); and, the Local Television Transmission Service (part 101). New services in these parts also may be included within the spectrum leasing rules and policies adopted herein, subject to a separate determination to exclude a service in the proceeding establishing service rules. Nothing in this *Report and Order* is intended to supplant any existing rules or policies permitting shared operation of facilities, private carrier operation, or the sale of excess capacity on a licensee's system.

28. In addition, we will extend these leasing policies to two additional sets of exclusive use licenses: (1) VHF Public Coast Station licenses, a subset of the part 80 services, and (2) 218–219 MHz Service, one of the part 95 services. Finally, we will apply these policies to the new part 27 services in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, as set forth in the order establishing these services. We permit spectrum leasing activities for all covered licensees, whether their authorized use is limited to private or non-commercial operation, or not. For services where shared spectrum can become exclusive under a particular authorization as a result of surpassing loading levels as specified in the applicable rules, we will look at the specific authorization to determine whether it is exclusive on this basis such that the licensee could avail itself of our leasing procedures. Finally, in services where we have adopted licensing with a geographic service area overlay protecting incumbent Wireless Radio Service licensees, the remaining incumbents will also be permitted to engage in leasing. (To the extent an incumbent licensee is not a Wireless Radio Service licensee, as in the instance of broadcast licensees in the 700 MHz bands, we are not at this time permitting it to lease spectrum pursuant to the policies and procedures adopted herein.)

29. The following Wireless Radio Services are excluded from the leasing policies set forth in this *Report and Order*: the Guard Band Manager Service (part 27, subpart G); Experimental Radio, Auxiliary, Special Broadcast, and

Other Program Distributional Services (part 74); Maritime Services other than VHF Public Coast Stations regulated under subpart J (part 80); Aviation Services (part 87); Public Safety Radio Services (part 90); the Location and Monitoring Service with regard to licenses for non-multilateration LMS systems (part 90); Personal Radio Services other than the 218–219 MHz Service (part 95); and the Amateur Radio Service (part 97). In addition, at this time we continue to exclude the ITFS and the Multipoint Distribution Service (MDS)/Multichannel Multipoint Distribution Service (MMDS), parts 74 and 21 services, noting that a recent proceeding has been initiated that raises leasing issues, among others, with respect to those particular services. We also exclude the Multi-channel Video Distribution and Data Service (MVDDS) because that service was not included within the scope of the *NPRM* and was established subsequently without any provisions regarding leasing. Finally, we also exclude public safety licensees regulated by part 90, including all public safety licensees that have obtained their licenses pursuant to section 337 authority. In the *Further Notice*, we consider whether to permit spectrum leasing in a number of these services.

30. In our view, leasing on shared frequencies presents implementation concerns, particularly when the shared (or non-exclusive) nature of licensing on such frequencies permits interested parties to seek their own authorizations to operate and where the loading levels may convert a license on a previously shared frequency to an exclusive license. We do, however, consider in the *Further Notice* whether to extend our leasing policies to these and other additional services.

4. Specific Policies and Procedures Applicable to Spectrum Leasing Arrangements

a. "Spectrum Manager" Leasing—Spectrum Leasing Arrangements That Do Not Involve a Transfer of *De Facto* Control Under Section 310(d)

31. Under spectrum manager leasing, licensees are not required to obtain prior Commission approval for such leases, but must notify the Commission of the lease and provide certain certifications and information regarding the spectrum lessees and the lease terms.

(i) Respective Rights and Responsibilities of Licensees and Spectrum Lessees

32. *Licensees' rights and responsibilities.* Under spectrum