

manager leasing arrangements, we grant licensees the right to lease any or all of their spectrum usage rights to spectrum lessees, and to do so without the need for Commission approval, so long as licensees retain *de jure* control of the license and act as spectrum managers with regard to the leased spectrum by continuing to exercise *de facto* control over that spectrum, pursuant to the standard enunciated above. The Commission will hold licensees directly and primarily responsible for ensuring their lessees' compliance with the Act and applicable Commission policies and rules. Failure of a licensee to meet the criteria of the revised *de facto* control standard would constitute an unauthorized transfer of control under section 310(d). The licensee must also file a notification with the Commission that it has entered into a spectrum leasing arrangement. Failure to do so would subject a licensee to possible enforcement action as a substantive rule violation.

33. Since the licensee retains *de facto* control of the leased spectrum and is held directly accountable for lessee compliance with applicable policies and rules concerning the leased spectrum under this particular type of leasing arrangement, the Commission will look first to the licensee to exercise its responsibilities and ensure compliance. To the extent a licensee fails to ensure its lessee's compliance, the licensee will be subject to enforcement action, including admonishments, monetary forfeitures, and/or license revocation, as appropriate, pursuant to sections 503(b) (forfeiture provisions) and 312 (license revocation provisions) of the Communications Act. We will not, however, hold licensees responsible for their lessees' compliance with Commission rules and policies that are not directly related to the use of the leased spectrum.

34. Because leasing pursuant to this option requires that spectrum lessees meet certain eligibility requirements, we will require that licensees submit appropriate certifications by the lessee as part of the lease notification. We will permit licensees to reasonably rely on those certifications. To the extent, however, that a licensee has knowledge that a spectrum lessee does not satisfy these eligibility requirements, or reasonably should have such knowledge, then allowing such leasing to proceed would violate our spectrum manager leasing policies and we will subject that licensee to appropriate enforcement action. In addition, licensees retain responsibility for maintaining compliance with applicable eligibility and ownership requirements

imposed on them pursuant to the license authorization. Spectrum leasing cannot be used by licensees and lessees as a means of thwarting or abusing the basic qualifications and eligibility policies applicable to licensees.

35. *Spectrum lessees' rights and responsibilities.* The spectrum lessee must comply with Commission requirements associated with the license, and must maintain an ongoing relationship with the licensee from whom it leases spectrum. The lessee must certify that it meets all applicable general eligibility requirements associated with the leased spectrum (with such certifications becoming part of the notification submitted by the licensee, as noted above). The lessee's eligibility certifications will be similar to the certifications currently submitted by applicants seeking a license authorization in the particular service. We will hold the spectrum lessee directly accountable for these certifications.

36. Although we intend to enforce our operational rules and policies directly against the licensee in the first instance, as discussed above, we also determine to hold spectrum lessees independently accountable for complying with the Act and our policies and rules. The lessee also must accept Commission oversight and enforcement consistent with the license authorization. The lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and even suspend operations under certain conditions. Spectrum lessees who violate our rules or other federal laws potentially will be subjected to forfeitures under section 503(b) of the Communications Act, other administrative sanctions, and criminal prosecution. In addition, to the extent that lessees in their leasing activities qualify as common carriers under section 332 of the Communications Act and Title II, they may also be subject to appropriate enforcement actions.

37. We also will require both the licensee and spectrum lessee to retain a copy of the lease agreement and to make it available upon request by the Commission.

38. *Subleasing.* We will allow spectrum lessees to sublease their spectrum usage rights under certain conditions. Specifically, the licensee must agree to permit subleasing and must be in privity with the sublessee so that the licensee can act as spectrum manager by exercising *de facto* control over the subleased spectrum. Pursuant

to the notification requirements for this type of leasing, the licensee also must notify the Commission about the sublease. Licensees may seek to protect themselves from the risks associated with subleasing arrangements by including provisions in their leases that prohibit the spectrum lessee from entering into a sublease.

39. *Renewal.* A licensee and spectrum lessee that have entered into a spectrum leasing arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement during the term of the renewed license authorization. The licensee must notify the Commission of such an extension of the spectrum leasing arrangement on the same application it submits for license renewal.

#### (ii) Application of Particular Service Rules and Policies

40. *Interference-related service rules.* The interference and RF safety rules applicable to the licensee as a condition of its license authorization will also apply to the spectrum lessee. Spectrum manager licensees will have direct responsibility and accountability for ensuring that their spectrum lessees comply with these rules, including responsibility for resolving all interference disputes and complying with safety guidelines relating to radiofrequency radiation.

41. *General eligibility policies and rules.* Under spectrum manager leasing, we will require that spectrum lessees satisfy the eligibility and qualification requirements that are applicable to licensees under their license authorization. Specifically, as a policy matter we extend to spectrum lessees the eligibility requirements of section 310 pertaining to foreign ownership, doing so in order to both protect the national security and promote the public interest benefits of foreign investment in U.S. telecommunications markets. Accordingly, we will require that spectrum lessees meet applicable foreign ownership eligibility requirements by certifying that they meet section 310(a) requirements and, to the extent that section 310(b) applies (e.g., to the extent they are common carriers), that they meet those requirements as well. As part of the notification process for this type of leasing arrangement, each spectrum lessee must certify that it is not a foreign government or representative of a foreign government in the same manner as required of licensees pursuant to section 310(a). In addition, if the