

spectrum lessee intends to provide a service to which section 310(b) applies, it must certify that it is not an alien or representative of an alien, is not organized under the laws of a foreign government, does not have more than one-fifth direct alien ownership, or either does not have more than one-quarter indirect alien ownership or has obtained the necessary declaratory ruling approving its level of ownership above one-quarter indirect alien ownership.

42. We will also require, as a general policy matter, that spectrum lessees satisfy the qualification requirements, including character qualifications, applicable to the licensee under the license authorization. Thus, for instance, the lessee must not be a person subject to the denial of Federal benefits under the Anti-Drug Abuse Act of 1988. Similarly, the lessee must certify whether it is a person who has been convicted of a felony, had a license revoked for any reason (*e.g.*, misrepresentation or lack of candor), had any application for initial, modification, or renewal of a station authorization, license, or construction permit denied by the Commission, or has been convicted of unlawful monopolization.

43. *Use restrictions.* With regard to use restrictions, where a license authorization in a particular service is flexible, and imposes few if any restrictions on the types of services that licensees may offer, spectrum lessees too will be permitted to offer any of these services regardless of the specific services being offered by the licensee. To the extent the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, we also will restrict spectrum lessees in the same manner. Thus, for example, to the extent that licensees in private services are restricted from deploying commercial services on their spectrum, we also restrict lessees from using the spectrum for commercial services.

44. *Designated entity/entrepreneur policies and rules.* Under this leasing option, we determine that designated entity and entrepreneur licensees will be able to undertake spectrum leasing arrangements so long as doing so is consistent with our existing designated entity and entrepreneur policies and rules. A designated entity and/or entrepreneur licensee may lease to any spectrum lessee and avoid the application of our unjust enrichment rules and/or transfer restrictions so long as the lease does not result in the lessee becoming a "controlling interest" or affiliate that would cause the licensee to

lose its designated entity or entrepreneur status. We will require each licensee notifying the Commission about a lease involving a license still subject to entrepreneur transfer restrictions or potentially subject to unjust enrichment obligations to certify that the lease does not affect the licensee's continuing eligibility to hold a license won in closed bidding or to retain bidding credit or installment payment benefits. Accordingly, nothing we do herein alters a designated entity's or entrepreneur's obligation to comply with our attribution requirements or changes the rules regarding the five-year transfer restriction for C and F block licenses won in closed bidding. Where a designated entity or entrepreneur licensee that is participating in the Commission's installment payment program enters into a lease that preserves its eligibility, the licensee remains fully and solely responsible for the outstanding debt amount, as reflected in our rules and any applicable financing documents. To the extent that there is any conflict between the revised *de facto* control standard for spectrum leasing arrangements, as set forth in this *Report and Order*, and the *de facto* control standard in our rules for designated entities and entrepreneurs, we will apply the latter for determinations regarding whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the licenses or for other benefits such as bidding credits and installment payments.

45. *Construction/performance requirements.* We will allow licensees to rely on the activities of their spectrum lessees for purposes of complying with the build-out requirements that are conditions of the license authorization. This reliance will be permissible whether the licensee is required to construct and operate one or more specific facilities, cover a certain percentage of geographic area, reach a certain percentage of population, or provide "substantial service." In addition, we determine that applicable performance or buildout requirements remain a condition of the license, and cannot be passed on to spectrum lessees even though the activities of the latter may be "counted" for purposes of measuring buildout. To the extent that a licensee seeks to rely on the activities of a spectrum lessee to meet the licensee's obligation, and for some reason the lessee fails to engage in those activities, the Commission will enforce the applicable performance or buildout requirements against the licensee,

consistent with our existing rules. Similarly, to the extent there are rules relating to discontinuance of operation, the Commission will enforce these rules against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

46. *Policies and rules relating to competition.* Assessment of potential competitive effects of transactions, whether they be transfers of control, license assignments, or spectrum leasing arrangements, remains an important element of our policies to promote facilities-based competition and guard against the harmful effects of anticompetitive conduct. Accordingly, we will apply the Commission's general competition policies to spectrum manager leasing arrangements.

47. Specifically, the cellular cross-interest rule and associated policies will be applied to spectrum leasing arrangements involving cellular authorizations in Rural Service Areas (RSAs). Thus, a cellular licensee in an RSA (or any entity with an attributable interest in such a licensee) would not be permitted to enter into a spectrum lease involving the other cellular spectrum block to the extent the spectrum lessee would have the authority to make decisions or otherwise engage in activities that determine or significantly influence the nature and types of services provided using the leased spectrum, the terms upon which those services are offered, or the prices charged. For leases meeting these tests, the cellular spectrum is attributable to the spectrum lessee.

48. In addition, we retain the discretion to consider the use of leased spectrum by a lessee to provide facilities-based commercial mobile radio services as a relevant factor when assessing marketplace competition in the Commercial Mobile Radio Services (CMRS) in transactions involving either the licensee or the spectrum lessee. As we indicated when we eliminated the CMRS spectrum cap, the Commission now evaluates the competitive effects of CMRS spectrum aggregation on a case-by-case basis. In those circumstances where information on potential competitive harm comes to our attention or where serious allegations of substantial competitive harm are made, we must determine, based on a case-by-case review of all relevant factors, whether services provided over both leased and licensed spectrum in specific product and geographic markets should be taken into account. Thus, the presence of a spectrum lease or other arrangement between or among CMRS providers may be attributable.