

49. Although we anticipate that most leasing arrangements will serve to enhance competition, including the entry of new facilities-based competitors, we must nonetheless ensure that leasing does not enable harmful anticompetitive conduct. Because spectrum manager leases require only notification to the Commission, it is important that parties to such leases provide certain basic information to the Commission and the marketplace regarding any potential impact of the lease on facilities-based competition. At the same time, it is important that any such disclosure requirements not be so burdensome that they would discourage parties from using the spectrum leasing model to negotiate spectrum access arrangements that pose no competitive threat. To balance these interests, we will require, as part of the spectrum manager lease notification process, in which certain lessees provide necessary certifications relating to these policies. Specifically, if the lease involves spectrum in the cellular services in Rural Service Areas, spectrum lessees must certify that the leasing arrangements do not violate the cellular cross-interest rules. In addition, spectrum lessees leasing CMRS spectrum (which includes cellular, broadband PCS, and SMR spectrum regulated as CMRS) must disclose to the Commission whether they hold direct or indirect interests (of 10 percent or more) in any entity that already has access to 10 MHz or more of CMRS spectrum (through a license or lease) in the same geographic area. For the purpose of implementing this requirement, we define these direct or indirect interests in the same manner as defined pursuant to existing rules for wireless licensees under part 1 of our rules. In particular, a lessee must disclose whether it has a 10 percent direct or indirect interest in an entity, as defined in § 1.2112 of subpart Q of our rules. We will also require these leasing parties to indicate whether the lease arrangement reduces the number of CMRS competitors in the market. Such disclosure requirements will help to ensure market transparency, and will also help the Commission to distinguish those leases that may warrant further inquiry to assess whether there is a competitive impact from the likely vast majority of leases that will have no competitive impact and require no further inquiry.

50. *Regulatory classification.* We determine that for those license authorizations under which licensees have the opportunity to choose whether to operate as and be regulated under a CMRS/common carrier or a PMRS/non-

common carrier structure (or both), spectrum lessees will also be entitled, to the same extent, to select their own regulatory status. In the case of a service in which the regulatory status of licensees is prescribed by rule, the lessee will be presumed to be bound by the status set forth in the rules and applied to the licensee. Under this type of spectrum leasing, to the extent that a spectrum lessee seeks to operate under a different regulatory status than the licensee or the service, the lessee will be responsible for meeting the obligations relating to its choice.

51. *Various other rules, including certain statutory obligations.* Under spectrum manager leasing, spectrum lessees will be subject to other statutory and related regulatory requirements—including Title II obligations or other requirements, such as those relating to the Communications Assistance for Law Enforcement Act (CALEA), Equal Employment Opportunity (EEO), Telecommunications Relay Service (TRS), North American Numbering Plan (NANP), universal service funds, and regulatory fee payment obligations—depending upon the nature of their operations on the leased spectrum and the terms of the applicable statutory and/or regulatory provisions. These regulatory requirements are generally applied to entities based on the type of service they provide without regard to their status as a licensee or a lessee. For instance, such provisions may apply to common carriers or telecommunications carriers as defined under the Communications Act. Thus, if a lessee is operating as a common carrier, it will be subject to sections 201 and 202 of the Communications Act of 1934, as amended, and the related obligations attendant to being a provider of wireless services on a common carrier basis. The applicability of these types of provisions will be independent of an entity's status as licensee or spectrum lessee.

52. While the rules and statutory requirements cited above apply to lessees as well as licensees based on the provision of service, we note that our E911 requirements expressly apply only to "licensees" instead of particular services. Thus, a spectrum lessee who provides facilities-based service does not come within the literal scope of the E911 rule. Because we do not intend that spectrum leasing be used as a means of circumventing the underlying purposes of our service rule and policies, including our E911 rules, licensees retain their E911 obligations with respect to leased spectrum. Accordingly, to the extent that a spectrum manager leasing arrangement involves a lessee providing CMRS

services, the licensee must continue to ensure that the E911 obligations are being met, whether by the licensee or its lessee.

(iii) Notification

53. For spectrum manager leasing, we will require that licensees provide notification to the Commission that they have entered into this type of spectrum leasing arrangement. This notification must be submitted in advance of operation, as discussed below, and failure to notify the Commission prior to operation would constitute a substantive rule violation subject to enforcement action. This notification provides us with useful information about spectrum usage and helps us to ensure that licensees and lessees are complying with our interference and non-interference related policies and rules.

54. *Notification requirements.* Licensees must report these leases to the Commission within 14 days of execution, and at least 21 days in advance of operation. Licensees will be required to submit the following information on each spectrum lease to the Commission: (1) Necessary information on the identity of the spectrum lessee (including necessary contact information) and its eligibility to lease spectrum; (2) the specific spectrum leased (in terms of amount, frequency, and geographic area involved), including the call sign affected by the lease; (3) the term of the lease; and (4) other information required pursuant to the policies applicable to these leasing arrangements (e.g., foreign ownership and other certifications), as discussed above. This notification will contain information similar to that submitted currently on our Form 603. Such submission will be placed on an informational public notice on a weekly basis, unless the license involved is not subject to prior public notice requirements. We include an advance notification requirement so as to allow the Commission and the public some opportunity to review the leasing arrangement prior to operation. While we will not usually require the lease parties to file a copy of the lease agreement with the notification, parties must maintain copies of the lease as well as any authorization issued by the Commission, and make them available for inspection upon request by the Commission or its representatives. For spectrum manager leasing arrangements of one year or less, licensees must provide notice at least ten days in advance of operation. In all other respects, the rules generally applicable to spectrum manager leasing