

arrangements, as enunciated above, apply to these shorter-term arrangements.

55. *Commission authority to investigate and terminate the lease.* The Commission retains the ability to investigate and terminate any spectrum leasing arrangement to the extent it determines, post-notification, that the arrangement constitutes an unauthorized transfer of *de facto* control under our new standard or raises foreign ownership, competitive, or other public interest concerns. We will closely monitor leasing information and activity to ensure that licensees and lessees do not use this leasing option as a means of thwarting or abusing the Act or applicable Commission policies and rules (e.g., the basic qualifications and rules applicable to licensees). Commission review of a spectrum lease implemented under this option might be initiated if information were to come to the attention of our staff—through the notification process or other sources (e.g., news reports or press releases)—that suggested a potential problem with the lease under the applicable rules and policies. Alternatively, interested parties might seek informal guidance or a formal determination from the Commission regarding a particular lease arrangement by means of a letter to the Commission, a petition, or a complaint. Such processes are no different from current practices before the Commission where an entity may provide information to the Commission staff and pose questions about the permissibility of, for example, the terms and practices of the parties under a management agreement or other business transaction. We believe that these processes will ensure that we are able to terminate a leasing arrangement under this option where warranted in fulfillment of our statutory and public interest obligations.

b. “*De Facto Transfer*” Leasing—Spectrum Leasing Arrangements That Involve Transfers of *De Facto* Control Under Section 310(d)

56. We also provide licensees and spectrum lessees with an alternative model for spectrum leasing—one in which licensees can delegate *de facto* control of the leased spectrum and associated legal responsibilities to their spectrum lessees. Under this “*de facto transfer*” leasing, we include two general categories for this type of spectrum leasing: (1) “Long-term” leasing arrangements (i.e., leases with individual or combined terms of longer than 360 days); and (2) “short-term” leasing arrangements (leases of 360 days or less). Although these leasing arrangements involve transfers of *de*

*facto* control under Section 310(d) that necessitate Commission approval, we adopt significantly streamlined procedures to minimize the regulatory burdens and transaction costs imposed on parties entering into these arrangements.

(i) Long-Term *De Facto Transfer* Spectrum Leasing Arrangements

57. This leasing option enables licensees and spectrum lessees to enter into the kind of long-term spectrum leasing arrangements endorsed by many of the commenters. Under this option, referred to as *de facto transfer leasing*, licensees will be permitted to transfer *de facto* control of the leased spectrum to lessees pursuant to streamlined approval procedures as long as the leasing arrangements meet certain conditions. We define these long-term leases as lease arrangements involving transfer of *de facto* control to a spectrum lessee that do not qualify as temporary “short-term” leasing (i.e., leasing of no more than 360 days duration).

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

58. *Licensees’ rights and responsibilities.* Under this leasing option, licensees may lease any or all of their spectrum usage rights pursuant to spectrum lease arrangements in which they retain *de jure* control of their licenses but transfer *de facto* control of leased spectrum, and associated responsibilities, to spectrum lessees. Under these *de facto transfer* leases, licensees are not required to exercise the kind of operational oversight over the leased spectrum and the lessee that is prescribed for licensees with regard to spectrum manager leasing (which requires no Commission approval). We thus relieve licensees of primary and direct responsibility for ensuring that their lessees’ operations comply with Commission policies and rules.

59. While licensees are relieved of many responsibilities under this leasing option, they nonetheless retain some residual responsibilities regarding the leased spectrum. The lease does not involve a complete and permanent transfer of control, and the licensee retains *de jure* control of the license as well as some degree of actual control, such that it retains some responsibility to the Commission for operations on spectrum encompassed within its license. While we seek to carefully limit this licensee responsibility in order not to impede commercially viable leasing arrangements, licensees who are implementing these leases cannot relinquish all rights and responsibilities

of the license authorization to their lessees. Moreover, we think it is appropriate to expect our licensees to exercise an appropriate degree of care when entering into *de facto transfer* leasing arrangements. For instance, if a licensee engages in a sham leasing arrangement with an affiliate in an effort to enable that affiliate to undertake activities that might otherwise put the license at risk if undertaken directly by the licensee, we would subject the licensee to appropriate enforcement action. We will also hold the licensee accountable for its own violations, including those related to its lease arrangement with the lessee. In addition, we find that it may be appropriate to hold the licensee responsible in specific cases for ongoing violations or other egregious behavior on the part of the spectrum lessee about which the licensee has knowledge or should have knowledge. An example of this type of situation might include the case where a licensee allows a lessee to continue to operate on the leased spectrum despite a Commission order that the lessee cease operations.

60. *Spectrum lessees’ rights and responsibilities.* Under *de facto transfer* leasing, the primary responsibility for ensuring compliance with Commission policies and rules is transferred to spectrum lessees. We will hold lessees primarily and directly responsible for complying with the interference, technical, or other service rules (including eligibility requirements) applicable to the licensee pursuant to the Act, the Commission’s rules, and the terms of the underlying authorization. We determine that, under the procedures we adopt herein, spectrum lessees will be granted an instrument of authorization that brings them within the scope of our direct forfeiture procedures under section 503(b) of the Act. Lessees will assume responsibility for interacting with the Commission regarding the leased spectrum, and making all related filings.

61. If there is a question about interference or other technical performance issue, the Commission’s Enforcement Bureau will first approach the authorized spectrum lessee, and the lessee will be expected to bring its operations into compliance with the Commission’s requirements. To the extent that spectrum lessees violate the Communications Act, Commission rules, a Commission order, or a term or condition of an authorization, they will be subject to monetary forfeitures pursuant to section 503(b)(1) in the same manner as any other person holding an authorization.