

62. *Subleasing.* We conclude that permitting subleasing for long-term *de facto* transfer leases will afford parties additional flexibility in their business arrangements. We thus will permit spectrum lessees under long-term leasing arrangements to sublease spectrum, provided certain conditions are met. Specifically, parties entering into a sublease will be required to comply with the Commission's rules for obtaining approval for leasing arrangements and will be governed by those same policies. As with spectrum manager leasing arrangements, 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. Where a sublease has been approved by the Commission, the sublessee will become the party primarily responsible for compliance with Commission rules and policies, although the lessee and licensee will continue to have some responsibility to the Commission for their actions as well as those of the sublessee. In addition, when the parties to a sublease file their application with the Commission, they must include written consent from the licensee to the proposed sublease. This will ensure that the licensee is aware of the sublease and the role of the new sublessee in operating on frequencies covered by the licensee's license.

63. *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. The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the extension of the spectrum leasing arrangement.

(b) Application of Particular Service Rules and Policies

64. *Interference-related service rules.* As with all other forms of spectrum leasing discussed in this *Report and Order*, spectrum lessees must comply with all of the interference rules applicable to licensees under the license authorization. Under this type of leasing arrangement, however, as distinct from

spectrum manager leasing above, spectrum lessees are primarily responsible for complying with these rules, including responsibility for resolving all interference disputes and complying with safety guidelines relating to radiofrequency radiation.

65. *Eligibility policies and rules.* Spectrum lessees under this *de facto* transfer leasing option must meet the same eligibility and qualification restrictions (including character qualifications) that are applicable to licensees under their license authorization. These include general eligibility restrictions placed on the licensees under their authorizations, such as foreign ownership limitations. As with spectrum manager leasing, they also include qualification restrictions. The lessee must not be a person subject to denial of Federal benefits under the Anti-Drug Abuse Act of 1988, and 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), or been convicted of unlawful monopolization.

66. *Use restrictions.* Spectrum lessees entering into *de facto* transfer leasing arrangements must comply with the use restrictions that the Commission has imposed with respect to particular services and authorizations, as with spectrum manager leasing.

67. *Designated entity/entrepreneur policies and rules.* Under this *de facto* transfer leasing option, designated entity and entrepreneur licensees may enter into leasing arrangements with any entity under the streamlined processing procedures described below, subject to any applicable transfer restrictions and/or any applicable unjust enrichment payment obligations. For example, under this option, a licensee holding a C or F block broadband PCS license won in closed bidding may, during the first five years of the license's initial term, enter into a spectrum leasing arrangement with a non-eligible entity only if the licensee's five-year construction requirement has already been met. A licensee paying for a license under the Commission's installment payment program may enter into a long-term leasing arrangement for that license without triggering unjust enrichment obligations, provided that the lessee would qualify for installment payments under terms as favorable as the licensee's. However, nothing in a spectrum leasing agreement can modify the licensee's sole responsibility for its debt obligation to the government, pursuant to the Commission's rules and any applicable notes and security agreements. A licensee using

installment payment financing that seeks to enter into a spectrum leasing arrangement with a lessee that would not qualify for an installment loan under terms as favorable as the licensee's must make full payment of the remaining unpaid principal and must pay any interest accrued through the effective date of the lease. Small business bidding credit unjust enrichment payments will be required and calculated as they would if the license were being assigned or transferred. Accordingly, we will require each licensee applying to the Commission to enter into a long-term *de facto* transfer leasing arrangement to certify whether or not the license is subject to entrepreneur transfer restrictions or unjust enrichment obligations. In addition, we will require each licensee applying to the Commission to enter into a long-term *de facto* transfer leasing arrangement involving a license still subject to the installment payment program, and its proposed lessee, to execute the Commission-approved financing documentation.

68. *Construction/performance requirements.* We will allow licensees using this leasing option 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. Our policies here are identical to the approach taken with respect to the spectrum manager leasing option. Because 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, the Commission is not imposing any buildout obligations on the spectrum lessee.

69. *Policies and rules relating to competition.* As with spectrum manager leasing, the Commission's policies relating to cellular cross-interest restrictions and promoting facilities-based competition and guarding against the harmful effects of anticompetitive conduct will be applied to long-term *de facto* transfer spectrum leasing arrangements, and we will require that spectrum lessees submit the same certifications relating to competition matters. Attribution of spectrum will necessarily depend upon the actual circumstances of a given lease.

70. *Regulatory classification.* As with spectrum manager leasing arrangements, a spectrum lessee under long-term *de facto* transfer leasing will be entitled to select its own regulatory status, either as a CMRS/common carrier or PMRS/non-