

with long-term leasing arrangements discussed above, we adopt even more expedited approval procedures and permit more flexible leasing policies.

79. We find that the public interest would be served by facilitating short-term *de facto* transfer leasing arrangements that meet entities' temporary needs for access to spectrum. There are legitimate specific needs that can most easily and efficiently be addressed through these kinds of short-term leasing arrangements, and we conclude that the public interest would be served by providing special procedures tailored to enable parties to enter into such arrangements, with minimal costs and delay, that can meet their temporary needs for access to spectrum. Accordingly, with regard to all of the wireless services affected by this *Report and Order*, we will approve, pursuant to our authority to grant special temporary authority (STA) under section 309(f) of the Communications Act, short-term *de facto* transfer leasing arrangements, for a period of up to 360 days, if they meet the specified conditions discussed below. We believe that in order to permit meaningful, timely short-term arrangements, we must ensure that our processes do not unduly delay the efforts of a licensee and lessee to implement this type of agreed-to business arrangement. Also, by virtue of the temporary nature of these leases, we determine that additional flexibility with respect to certain of the service rules is appropriate, and we accordingly will not require that short-term spectrum lessees meet all of the regulatory requirements that are applicable to the licensee.

80. We believe potential spectrum users' needs for near-term, temporary access to spectrum usage rights can best be achieved under our statutory STA authority. Section 309(f) empowers the Commission to grant STA applications if it finds that "there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest." Under this authority, the Commission may grant such applications for a period of up to 180 days and may renew the STA for as much as an additional 180 days per renewal.

81. Because of special considerations related to the temporary nature of such leases, and the specific need to minimize costs, uncertainty, and delay when addressing parties' short-term needs for access to spectrum that would benefit the public, we determine that short-term leasing arrangements that

meet specific conditions generally warrant grant of an STA. Our findings in this *Report and Order* support the determination that the temporary operations associated with a short-term lease are in the public interest. Moreover, timely initiation of operations under such a short-term arrangement often is necessary to permit the spectrum lessee to meet service needs. Parties to a short-term lease may rely on the findings contained in this *Report and Order*, but must still include an individualized statement of why the proposed arrangement meets the public interest requirements of section 309(f).

82. Consistent with our statutory authority concerning temporary authorizations, we define a short-term lease as a lease agreement with a term of no more than 360 days. To fall within this definition, the lease may have an initial term of up to 180 days, which may be renewed for as much as an additional 180 days. Thus, a short-term lease potentially could have an initial term of 180 days or less, and be renewable one or more times up to a maximum of 360 days.

83. We also adopt safeguards to ensure that these special policies and procedures are provided only for temporary arrangements appropriate for the STA process we adopt here. We will not permit parties to convert these temporary arrangements into longer term leases in a manner that would evade the policies we have adopted for long-term arrangements involving a transfer of *de facto* control discussed earlier in this *Report and Order*.

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

84. *Licensees' and spectrum lessees' rights and responsibilities.* Under these short-term *de facto* transfer leasing arrangements, we will hold the spectrum lessee primarily accountable for compliance with the Commission's rules and policies (which generally will be operational, technical, and interference-based), to the extent they are applicable to the lessee's use of the leased spectrum. The licensee will generally not be directly liable for the acts of its lessee, but will be accountable for its own willful or repeated violations, including those related to its lease arrangement with the lessee. Similarly, both licensees and short-term spectrum lessees will be subject to our jurisdiction and to possible enforcement action for violation of any technical or other rules that are applicable to the license, to the same extent and in the same manner as any other licensee. In addition, we will specifically and

individually condition grant of these short-term spectrum leasing applications on the requirement that the spectrum lessee must temporarily suspend, terminate, or modify its operations without a hearing if the Commission or its staff issues an order determining that the lessee is or may be in violation of the Act, a rule, or other term or condition of the authorization.

85. *Enforcement of restrictions on short-term leasing.* As discussed above, the special policies and procedures that we adopt here are intended to be used only for short-term leasing arrangements. Accordingly, we will carefully review filings made by parties, and require appropriate certifications, to ensure that such leasing arrangements do not exceed 360 days. We also note that should we find evidence on our own investigation or have evidence brought to our attention that the parties to a leasing arrangements are attempting to use the short-term leasing procedures for a lease that in fact will exceed 360 days (or the parties reasonably expect the lease to run for longer than 360 days), we will take all appropriate enforcement action against the licensee and lessee, including possible forfeitures, revocation of authority to operate pursuant to the lease, and/or revocation of the underlying license. Among other things, we will guard against the attempted use of affiliates to evade the short-term lease time limit as well as arrangements that seek to undercut fundamental Commission policies in the guise of being a short-term lease.

86. *Extension of leasing beyond 360 days.* We recognize that there may be circumstances in which parties enter into a short-term *de facto* transfer leasing arrangement expecting that the spectrum lessee's needs would not extend beyond 360 days and, at some later time, determine that they would like to maintain the spectrum lease beyond the short-term period. If so, then the parties must submit (in sufficient time prior to the expiration of the STA) the appropriate applications under our long-term spectrum leasing procedures, and obtain Commission consent pursuant to those procedures. With specific regard to designated entity licensees that seek to continue leasing to their spectrum lessees (or to their affiliates or controlling interests, as determined under our "controlling interest" standard) beyond 360 days, we will permit them to convert their arrangements to a long-term lease to the extent that they comply with our long-term leasing procedures and that they pay any unjust enrichment that would have been owed had the parties filed a