

long-term spectrum leasing application in the first instance.

87. We will not permit parties to effectively convert a short-term lease into a longer term arrangement and, by so doing, undermine or evade the applicable policies and procedures that we have adopted for long-term spectrum leasing arrangements. Accordingly, we will monitor the parties' use of these short-term leasing arrangements to ensure that they are not entering into a series of short-term leasing arrangements or otherwise leasing pursuant to these special policies and procedures as a means to evade policies and procedures (e.g., designated entity and/or entrepreneur rules or use restrictions) applicable to longer *de facto* control leasing arrangements. We also will deny any application to extend a short-term lease into something longer in those situations in which the parties would not have been able, in the first instance, to use the long-term leasing option because of the transfer, use or other restrictions applicable to the particular service.

88. *Subleasing.* In light of the fact that this type of leasing arrangement is designed to be short-term and to meet immediate needs of individual spectrum lessees, we will not permit subleasing under these short-term leasing policies.

89. *Renewal.* So long as the short-term leasing arrangement does not extend beyond a total of 360 days, 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

90. We will require that many, but not all, of the service rules applicable to the licensee also apply to spectrum lessees in the context of short-term *de facto* transfer leasing. In particular, we will require that short-term spectrum lessees comply with all of the technical, operational, and interference-related requirements placed on licensees (just

as those requirements apply to long-term lessees under the policies adopted herein). However, in order to encourage the use of short-term leasing to meet temporary needs for access to spectrum, we will provide additional flexibility to spectrum lessees by not requiring them to comply with certain of the other service rules applicable to licensees in many services.

91. *Interference-related service rules.* Requiring that short-term spectrum lessees meet the same technical, operational, and interference-related requirements imposed on the licensee will ensure that the activities of a short-term spectrum lessee do not cause interference to other operators.

92. *Eligibility policies and rules.* We will also require, under these policies, that short-term lessees satisfy all statutorily-based eligibility requirements, such as the restrictions on foreign ownership set forth in section 310 as well as the restrictions associated with the Anti-Drug Abuse Act of 1988. We note that this is consistent with our STA policies and rules.

93. *Use restrictions.* While use restrictions generally will be applied to lessees, we will permit some additional flexibility under short-term *de facto* transfer leasing with regard to one particular set of use restrictions. Specifically, we will permit licensees with service authorizations that restrict use of spectrum to non-commercial uses to enter into short-term leasing arrangements, under these STA procedures, that allow the lessee to use the spectrum commercially. Given that these leases are by definition designed to meet only temporary spectrum needs, and can in no event be extended beyond 360 days under the safeguards we are adopting, we do not believe that permitting this more flexible use by spectrum lessees will undermine the policies underlying the use restrictions of these services.

94. *Designated entity policies and rules.* Similarly, we will provide additional flexibility for short-term *de facto* transfer leases with regard to our designated entity and entrepreneur policies. Specifically, we will not subject licensees entering into short-term leases to designated entity unjust enrichment provisions or entrepreneur transfer restrictions that would be applicable if a designated entity or entrepreneur licensee were to enter into a long-term lease arrangement or transfer or assign its license. Thus, for example, a designated entity may lease spectrum on a short-term basis to a non-designated entity without triggering an unjust enrichment payment. In addition, entrepreneur licensees will not be

restricted from entering into short-term leases with non-eligible entities. We find that allowing this degree of flexibility in short-term leasing arrangements serves the public interest by making additional spectrum available for short-term use, and that because of the short-term nature of the leases involved and because of the safeguards we adopt, this approach will not undermine basic policies underlying our designated entity or entrepreneur rules by which licensees build out their systems and provide spectrum-based services. For instance, we do not permit designated entity and/or entrepreneur licensees to rely on short-term leasing arrangements to meet their buildout obligations. And, as discussed previously, we impose safeguards and restrictions to ensure that licensees and short-term spectrum lessees cannot convert these short-term arrangements into longer term arrangements that circumvent the designated entity or entrepreneur policies applicable to long-term leasing arrangements.

95. *Construction/performance requirements.* Unlike the policies applicable to long-term *de facto* transfer leasing arrangements described above, licensees will not be permitted to rely on the activities of their short-term spectrum lessees when seeking to establish that they have met any applicable construction requirements. These short-term leasing arrangements are expressly designed to be temporary in nature, and therefore cannot be counted to establish that the licensee is meeting the purposes and policies underlying our buildout rules, including the goal of ensuring establishment of service in rural areas.

96. *Policies relating to competition.* We will not extend the Commission's policies concerning competition to short-term *de facto* transfer leasing arrangements. Because these short-term leasing arrangements are by definition only temporary, and cannot be extended beyond 360 days (unless the arrangement would qualify under the long-term spectrum leasing policies and procedures discussed above), we conclude that these spectrum leasing arrangements do not raise concerns about the consolidation of control over spectrum that could have the type of unacceptable anticompetitive effects that are contrary to the public interest.

97. *Regulatory classification.* As with both spectrum manager leasing arrangements and long-term *de facto* transfer leasing, a short-term lessee will be entitled to select its own regulatory status, either as a CMRS/common carrier or PMRS/non-common carrier (or both), to the same extent as the licensee