

manager and *de facto* transfer leasing arrangements, we will require appropriate, commercially reasonable safeguards to ensure that they continue to meet their existing obligations to the Commission to pay license installment payment obligations. Accordingly, as a condition of participation in the new spectrum leasing opportunities set out in this *Report and Order*, licensees in the installment payment program, as well as their spectrum lessees (and any sublessees), will be required to take such actions and enter into such agreements that the Commission, in its discretion, determines are warranted to protect the integrity of the licensees' payment obligations for the licenses and the Commission's priority lien and security interest in the licenses and related proceeds (collectively "security interest"). To this end, we delegate to the Wireless Telecommunications Bureau and the Office of Managing Director (Bureau/OMD) the authority to make these determinations and implement the appropriate safeguards, consistent with the following guidelines:

- For a licensee participating in the Commission's installment payment program entering into a spectrum leasing arrangement, any new or existing documentation evidencing the Commission's security interest (hereinafter "financing documents") should include express reference to spectrum leasing arrangements involving spectrum lessees, as provided for in this *Report and Order*. This documentation should, at the least, make it clear that the Commission's security interest covers the licensee's rights in the lease payments.

- Any spectrum lease agreement that provides for a lease of spectrum that is licensed under the installment payment program should contain provisions providing that: (a) Any lease is subject to the execution of Commission-approved financing documents and the certification of such execution; (b) any lease can only be with lessees that are qualified to enter into such arrangements under the Commission's rules and regulations; (c) the lessee is required to comply with the Commission's rules and regulations and other applicable law, at all times, and give the licensee or the Commission the right to revoke, cancel, or terminate the lease for failure to comply; (d) the lessee may not hold itself out to the public as the holder of the license and the lessee will not have the right to nor under any circumstances undertake to hold itself out as a licensee by virtue of such lease; (e) the license remains subject to the

Commission's security interest, and the lease is not an assignment, sale, or transfer of the license itself; and (f) the licensee will not consent to any assignment in whole or part of such a lease, regardless of whether or not the lessee is the subject of reorganization and/or liquidation proceedings in bankruptcy, a receivership, or otherwise, unless such action is in compliance with the Commission's rules and regulations. The Bureau/OMD should ensure that the appropriate financing documentation reflects the licensee's obligation to include the foregoing provisions in its spectrum leases.

- In addition to the foregoing, the Bureau/OMD may require the lessee or any sublessee to execute, as a condition of leasing, appropriate documentation that, *inter alia*, acknowledges (1) the Commission's status as a secured party, and (2) the Commission's right to execute and file documentation that it deems necessary to protect its license-based security interests (e.g., financing and continuation statements) without the lessee's (or sublessee's) approval.
- Finally, with respect to licenses that are still subject to the installment payment program, no licensee or potential lessee may file a spectrum leasing notification or application (or otherwise participate in the leasing contemplated in this *Report and Order*) without first executing the Commission-approved financing documentation and so certifying, as described above.

106. *Bankruptcy or receivership.* Finally, we note the possibility that either a licensee or spectrum lessee may enter into bankruptcy or receivership during the term of a spectrum leasing arrangement. In such event, the measures described in the preceding paragraph will help ensure that the public's interest in recouping the full amount of a licensee's debt obligations to the Commission is not unduly compromised. In addition, we believe that in all cases (regardless of whether a debt is owed or not) the public interest is best served if a licensee's or lessee's regulatory obligations and responsibilities are clearly preserved during bankruptcy or receivership. Accordingly, we will require all leases—both spectrum manager and *de facto* transfer spectrum leasing arrangements—to contain the following basic provisions: The spectrum lessee must comply with the Commission's rules and regulations and other applicable law at all times, and if the lessee fails to so comply, the lease may be revoked, cancelled, or terminated by either the licensee or the Commission;

if the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the lessee has no continuing authority to use the leased spectrum, unless otherwise authorized by the Commission; the lease is not an assignment, sale, or transfer of the license itself; the lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's rules and regulations; and, the licensee will not consent to any assignment of the lease except to the extent such assignment complies with the Commission's rules and regulations.

6. Collection of Information on Spectrum Leasing

107. As a result of the policies and procedures we are adopting for spectrum leasing arrangements in this *Report and Order*, including the notification procedures for spectrum manager leasing and streamlined application procedures for *de facto* transfer leasing, the Commission will be making a significant amount of information available in ULS with regard to spectrum leasing. We anticipate that this information, combined with the information the Commission gathers in connection with its licensing process (e.g., transfers of control, assignments of licenses), will be helpful to entities seeking to gain access to spectrum usage rights through leasing. At this time, we will not impose any additional information filing requirements with regard to spectrum leasing.

108. As noted in the *Policy Statement*, we generally believe that if the market is dependent upon this information to flourish, economic incentives will encourage private sector entities to undertake the task. Spectrum brokers with specific expertise on the properties of different spectrum bands could match parties interested in acquiring spectrum usage rights with existing licensees. Thus, we support the establishment of private spectrum exchanges and spectrum brokers, as well as the development of services that list spectrum resources that licensees are offering for sale or lease. Also, we note that determining whether the Commission should collect any additional data to facilitate leasing raises several concerns that must be considered. For instance, such information may involve data (e.g., areas of available spectrum) that could disclose a company's business plans or sensitive information to its competitors. Also, collection of this information would impose costs on the Commission as well as licensees. Before imposing