

technical and service rules. We note that parties are free to petition the Commission at any time to waive any of its rules. Finally, we agree with SIA that, based on the record before us, there has been no demonstrable need for the Commission to have a greater role in collecting and disseminating information on licensed satellite spectrum. Accordingly, we will not take on such role at this time.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis Regarding the Report and Order

118. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

119. In the *Report and Order*, we adopt policies, rules, and procedures designed to facilitate the ability of many Wireless Radio Services licensees, including small businesses, to lease spectrum usage rights to third parties. Our action is intended to facilitate significantly broader access to valuable spectrum resources by enabling a wide array of facilities-based providers of broadband and other communication services, including small businesses, to enter into spectrum leasing arrangements with many Wireless Radio Service licensees.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

120. Although no comments were submitted directly in response to the IRFA, many commenters noted that spectrum leasing could benefit small or rural carriers by enabling access to unused spectrum licensed to other entities, and could promote the deployment of wireless services to rural and underserved populations. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), for example, stated that the Commission would serve the public interest by granting small carriers additional flexibility needed to serve their communities and reducing administrative burdens on those small carriers that may wish to pursue innovative arrangements for spectrum

access with other license holders. In a similar vein, the Rural Telecommunications Group (RTG) noted that the leasing of spectrum usage rights would increase the use of assigned spectrum and would place spectrum into the hands of rural telephone companies and entrepreneurs who are willing to serve the less populated portions of license areas.

121. In addition to these general observations, the Commission in the *NPRM* had specifically requested comment on the extent to which the qualification and eligibility rules and policies that are generally applicable to each licensee in a particular service should be applied to third-party entities seeking to lease spectrum. The Commission requested comment on whether and how the "designated entity," entrepreneur, bidding credit, and unjust enrichment rules that apply to many services should be implemented with respect to spectrum leasing arrangements between designated entity licensees and third parties that do not qualify for the same status. The Commission noted that, while interested in promoting spectrum leasing, it also sought to ensure that its approach would not invite circumvention of the underlying purposes of these designated entity-related policies and rules.

122. In response to this request for comment, RTG agreed with the Commission that leasing should not be used as a means of circumventing eligibility or service rules. Leap Wireless International, Inc. (Leap Wireless), a designated entity, argued that the Commission should retain and apply its designated entity restrictions to all forms of spectrum leasing. Leap Wireless further contended that permitting designated entities to lease spectrum usage rights to entities that are not similarly qualified would allow manipulation and evasion of the Commission's designated entity policies and rules.

123. In contrast, a number of commenters argued that designated entity licensees should be free to enter into lease agreements with non-designated entities. Alaska Native Wireless, L.L.C. (Alaska Native Wireless), Cook Inlet Region, Inc. (Cook Inlet), TeleCorp PCS, Inc. (TeleCorp), and Winstar Communications, Inc. (Winstar) stated that designated entities, entrepreneurs, small businesses, and minorities should be permitted to lease their spectrum without restrictions on spectrum lessee eligibility under the designated entity rules. Alaska Native Wireless, Cingular Wireless LLC (Cingular Wireless), and Cook Inlet

argued that if the eligibility rules were applied to lessees, many small businesses and entrepreneurs would be unable to take advantage of the benefits of secondary markets. These parties suggested that unrestricted leasing would give designated entity licensees a mechanism for raising capital to build out and operate their systems in unleased license areas. Nextel Communications, Inc. (Nextel), AT&T Wireless Services, Inc. (AT&T Wireless), and Cingular Wireless argued that the Commission should refrain from imposing an eligibility requirement that would limit the pool of potential lessees.

124. With regard to the applicability of the Commission's unjust enrichment rules, a number of commenters argued that designated entities that lease spectrum to non-designated entities should not be required to make unjust enrichment payments to the Commission. The U.S. Small Business Administration opposed applying unjust enrichment provisions to the leasing of spectrum by designated entities because it believes that leasing spectrum is fundamentally different from selling it. Similarly, AT&T Wireless argued that small businesses that lease spectrum have not been "unjustly enriched" because they are not selling the asset that was discounted. The National Telephone Cooperative Association (NTCA) stated that requiring small businesses, such as rural telephone companies, to repay bidding credits would serve as a significant disincentive for carriers to be inventive about using spectrum. Blooston, Mordkofsky, Dickens, Duffy, and Predergast (Blooston Rural Carriers) argued that allowing small businesses to retain the full value of their bidding credits when leasing their spectrum would promote greater opportunity for small businesses, because it would encourage these carriers to enter into a variety of business ventures.

125. In contrast, RTG stated that designated entities should have the right to lease their spectrum to any party that qualifies to use the spectrum, but then should be required to pay back any auction subsidies they received from the Commission. RTG noted that unjust enrichment payments would not foreclose such spectrum leasing as the cost likely would be factored into the lease negotiations between designated entities and non-designated entities. Cook Inlet also argued that a licensee who received the benefit of a bidding credit and who subsequently enters into a long-term lease should be required to pay back some or all of the bidding credit. With respect to short-term leases,