

*Further Notice*, we consider whether to extend our leasing policies to these and other additional services. An alternative to this approach would have been to allow other or all wireless licensees to enter into spectrum leasing agreements at this time. Many of these services were excluded by the explicit provisions of the *NPRM* from consideration, and thus we have little record to support extending spectrum leasing rules to these services at this time. Rather, the *Further Notice* issued in conjunction with the *Report and Order* seeks additional comment on the appropriateness of extending the spectrum leasing rules adopted in the *Report and Order* to other categories of Wireless Radio Service licensees.

165. *General applicability of license service rules and policies to spectrum lessees.* The *Report and Order* determines that, as a general matter, the service rules and policies governing a licensee will also be applied to a spectrum lessee. We acknowledge that this approach may cause administrative compliance burdens and costs for small entities that choose to become spectrum lessees. These same costs and burdens, however, are imposed on all entities seeking to become spectrum lessees, just as all licensees wishing to enter into spectrum leasing arrangements must comply with the applicable requirements governing the form of arrangement. An alternative to the approach adopted in the *Report and Order* would be to hold only the licensee responsible for compliance with the Commission's rules and policies. This approach would affect the burdens and responsibilities applicable to licensees that choose to enter into spectrum leasing, many of whom may be small entities. We reject this approach because we believe that our decision here will help prevent the undermining of our service rules and policies unless and until we explicitly decide to change such rules and policies. In fact, small (and large) entities, as well as the public, will benefit from licensees and lessees adhering to, for example, our interference and RF radiation rules.

166. *Licensee reliance on spectrum lessee activities to meet construction or performance obligations.* We decided in the *Report and Order* that licensees that engage in spectrum leasing arrangements remain responsible for complying with the construction or performance obligations associated with the license. The *Report and Order* determines that licensees that participate in spectrum manager leasing arrangements and long-term *de facto* transfer spectrum leasing arrangements

can rely upon the activities of their spectrum lessees in satisfying their construction and/or performance obligations. We anticipate no adverse impact on small entities as a result of this decision, since our approach in fact offers additional flexibility for licensees and should encourage parties to enter into leasing agreements without added concern that the arrangement will impede licensee compliance with our construction and performance rules. The *Report and Order* also determined that licensees that participate in short-term *de facto* transfer spectrum leasing arrangements would not be able to rely upon the activities of the short-term lessee to satisfy the construction and/or performance obligations. Since short-term *de facto* transfer spectrum leasing arrangements are intended to be of limited duration, we believe that this step is necessary to ensure that licensees do not seek to evade enforcement of our construction and/or performance obligations. This action poses no greater burden on small entities but treats all licensees that seek to enter into spectrum leasing arrangements on a comparable basis.

167. *Applicability of designated entity eligibility and unjust enrichment policies.* In the *Report and Order*, we continue to apply the existing designated entity and entrepreneur policies to both spectrum manager leasing arrangements and long-term *de facto* transfer leasing arrangements. Under the spectrum manager leasing policies, we allow designated entity and entrepreneur licensees to enter into leasing arrangements with spectrum lessees without triggering application of the Commission's unjust enrichment rules and/or transfer restrictions so long as the lease does not allow the lessee to become a "controlling interest" or "affiliate" of the licensee (as defined under existing Commission rules) such that the licensee would lose its designated entity or entrepreneur status. For long-term *de facto* transfer spectrum leasing, we allow licensees that have received designated entity benefits or hold a license as an entrepreneur to enter into long-term *de facto* transfer spectrum leasing arrangements with other entities, subject to provisions on transfer restrictions and unjust enrichment that apply to transfers or assignments of such licenses. We decide, however, not to subject short-term *de facto* transfer spectrum leasing arrangements to the designated entity eligibility and unjust enrichment policies, in order to promote the availability of spectrum pursuant to spectrum leasing arrangements to meet

short-term needs. We believe that providing this flexibility for leasing arrangements that are of short duration will not undermine enforcement of our general rules and policies. In each of these types of leasing arrangements, small entities will be affected by these policies, but will be treated comparably to larger entities that may be affected as licensees, spectrum lessees, or potential spectrum lessees.

168. Our decision in this area necessarily balances competing statutory obligations, competing public interest considerations, and the competing viewpoints expressed in comments filed with the Commission in this docket. We believe, however, that our decision about how to address these issues in the context of the three categories of spectrum leasing arrangements discussed in the *Report and Order* strikes an appropriate balance of these many competing considerations that serves the public interest in facilitating secondary market transactions while also upholding the integrity of our rules promoting opportunities designated entities and entrepreneurs. The Commission already provides significant benefits to small businesses that have become licensees pursuant to our designated entity and entrepreneur policies. In the *Report and Order*, we allow these licensees to enter into spectrum manager and long-term *de facto* transfer leasing arrangements so long as doing so does not undermine those policies. As for short-term *de facto* transfer arrangements, we also do not apply these policies because we conclude that the opportunities for licensees and lessees to undermine our policies are slim in the context of arrangements of very limited duration, and because we seek to provide special flexibility in our rules when allowing parties to address short-term spectrum needs.

169. Accordingly, we decide that licensees that enter into spectrum manager and long-term *de facto* transfer leasing arrangements may confront limitations on their ability to enter into arrangements with interested parties to the extent that a particular license is still covered by any designated entity rules and policies restricting eligibility under the license. Under spectrum manager leasing arrangements, designated entity and entrepreneur licensees may enter into leasing arrangements insofar as such arrangements would not cause them to lose their designated entity or entrepreneur status under the Commission's applicable rules. For long-term *de facto* transfer arrangements, licensees must reimburse