

following manner to the licensee and spectrum lessee:

(1) *Interference-related rules.* The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) *General eligibility rules.* (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization.

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (see sections 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (see § 1.2001 *et seq.* of subpart P of this part).

(3) *Use restrictions.* To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) *Designated entity/entrepreneur rules.* (i) A licensee that holds a license pursuant to small business and/or entrepreneur provisions (see § 1.2110 of subpart Q of this part and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (see § 1.2111 of subpart Q of this part and § 24.714 of this chapter) and/or transfer restrictions (see § 24.839 of this chapter) may enter into a long-term *de facto* transfer leasing arrangement with any entity under the streamlined processing procedures described in this section, subject to any applicable unjust enrichment payment obligations and/or transfer restrictions (see § 1.2111 of subpart Q of this part and § 24.839 of this chapter).

(ii) A licensee holding a license won in closed bidding (see § 24.709 of this chapter) may, during the first five years of the license term, enter into a spectrum leasing arrangement with an entity not eligible to hold such a license pursuant to the requirements of § 24.709(a) of this chapter so long as it has met its five-year construction requirement (see §§ 24.203, 24.839(a)(6) of this chapter).

(iii) The amount of any unjust enrichment payment will be determined by the Commission as part of its review of the application under the same rules that apply in the context of a license

assignment or transfer of control (see § 1.2111 of subpart Q of this part and § 24.714 of this chapter). If the spectrum leasing arrangement involves only part of the license area and/or part of the bandwidth covered by the license, the unjust enrichment obligation will be apportioned as though the license were being partitioned and/or disaggregated (see § 1.2111(e) of subpart Q of this part and § 24.714(c) of this chapter). A licensee will receive no reduction in its unjust enrichment payment obligation for a spectrum leasing arrangement that ends prior to the end of the fifth year of the license term.

(iv) A licensee that participates in the Commission's installment payment program (see § 1.2110(g) of subpart Q of this part) may enter into a long-term *de facto* transfer leasing arrangement without triggering unjust enrichment obligations provided that the lessee would qualify for as favorable a category of installment payments. A licensee using installment payment financing that seeks to lease to an entity not meeting the eligibility standards for as favorable a category of installment payments must make full payment of the remaining unpaid principal and any unpaid interest accrued through the effective date of the spectrum leasing arrangement (see § 1.2111(c) of subpart Q of this part). This requirement applies regardless of whether the licensee is leasing all or a portion of its bandwidth and/or license area.

(5) *Construction/performance requirements.* Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and the legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable

for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) *Cellular cross-interest rule.* The cellular cross-interest rule applies to spectrum leasing arrangements involving a cellular authorization in a Rural Service Area (RSA), and leased cellular spectrum is attributable to the spectrum lessee pursuant to § 22.942 of this chapter (see §§ 22.942, 22.909 of this chapter).

(7) *Regulatory classification.* If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis.

(8) *Regulatory fees.* The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (see § 1.1152 of subpart G of this part). Where, however, regulatory fees are paid annually on a per-unit basis (such as for CMRS services pursuant to § 1.1152 of subpart G of this part), the licensee and spectrum lessee each are required to pay fees for those units associated with its respective operations.

(9) *E911 requirements.* To the extent the licensee is required to meet E911 obligations (see § 20.18 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed with the E911 obligations.

(e) *Spectrum leasing application.* Parties entering into a long-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 603, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.911(d) of subpart F of this part may file the notification either electronically or manually.

(1) *Application fees.* The spectrum leasing application will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102 of subpart G of this part.