

become available for licensing to other parties via the cellular "unserved area" licensing process. In contrast, auctioned services such as broadband PCS provide for an "all or nothing" penalty for failing to meet the construction benchmarks, *i.e.*, if a licensee does not meet the five- or ten-year benchmark or make a showing of substantial service (where applicable) it forfeits the entire license and does not get to "keep what it builds." With this past experience in mind, we seek comment on whether these models, a hybrid model, or some combination of targeted models, may be utilized to facilitate service in rural areas. We also seek comment on whether the Commission should adopt performance requirements other than construction benchmarks to encourage the provision of wireless services to rural areas.

25. For unserved areas in the Cellular Radiotelephone Service, should the Commission adopt a different approach to assigning spectrum usage rights? Specifically, should the Commission adopt a "commons" model, which allows unlimited numbers of unlicensed users to share frequencies, with usage rights that are governed by technical standards but with no right to protection from interference? In addition, should the Commission amend the application filing process for cellular unserved areas to further encourage service providers to operate in rural areas? Furthermore, should the Commission apply the policy it has adopted with respect to unserved areas in the Cellular Radiotelephone Service to other services to promote wireless service in rural areas, *i.e.*, allow licensees to continue to serve the areas they have built-out, but make available for licensing to other parties those portions of a market that are not being served by current licensees? With respect to our ownership rules for the Cellular Radiotelephone Service, we seek comment on whether and to what extent our retention of the cellular cross-interest rule for RSAs advances spectrum-based services to rural areas. Should the Commission amend this rule to further the provision of wireless services to rural areas?

26. Finally, it may be economically inefficient, and thus harmful to customers, to require for each wireless service the same number of competitors in urban and rural areas. This appears to be true, for example, with regard to mobile telephony. How should a performance requirement policy for rural areas address this issue? Economic theory predicts that where licensees are in competitive markets, and no market failures exist and transactions costs are sufficiently low, market forces will

drive optimal decisions on what is built, where, and when. In that setting, build-out rules arguably would distort resource allocation, or at best be irrelevant. We ask parties to comment on the application of this economic theory to construction benchmarks that cover rural areas. In particular, for those services and rural markets where there is competition, how should we balance the putative efficiency harm of build-out rules against the potential equity benefit? Moreover, for those services and rural markets where there is a lack of competition, *e.g.*, as a result of small market size not being able to support multiple operators, is it possible that build-out rules would impose efficiency costs in the form of spending on excess capacity?

F. Band Manager Licensing

27. A band manager is a licensee that is specifically authorized to lease its licensed spectrum usage rights for use by third parties through private contractual agreements without having to seek prior Commission approval. Band managers may make their licensed spectrum available to facilitate all types of spectrum use that are consistent with the technical restrictions adopted for the particular band and in accordance with certain requirements imposed on the leasing relationship. The Commission has adopted band manager licensing for several bands. The band manager may subdivide its spectrum in any manner it chooses and make it available to any third party, consistent with the frequency coordination and interference rules specified for the particular band. Band managers are permitted to apportion spectrum based on both geographic area and frequency. Such spectrum apportionment differs from traditional geographic partitioning and spectrum disaggregation because it does not involve the transfer or assignment of the band manager's licenses to other parties. Band manager licensing is an innovative spectrum management approach that can enable parties to acquire spectrum more readily for varied uses. The band manager option will also enable small businesses to acquire spectrum in amounts to serve particular geographic areas, and for periods of time, that better suit their unique characteristics and specialized communications needs. We seek comment on whether rural telcos would be able to obtain more affordable access to spectrum through a band manager than by acquiring licenses directly at auction or through partitioning and disaggregation. We also seek comment on whether rural telcos would be more likely to obtain access to spectrum that

is tailored to their particular needs from a band manager than by acquiring licenses in an auction or through partitioning and disaggregation. Comments should also discuss whether band manager licensing would promote service or enhance the quality of service to rural areas.

G. Technical and Operational Rules

28. The Commission has developed technical and operational rules throughout its spectrum-based services in order to facilitate efficient use of the radio spectrum while minimizing the potential for harmful interference among licensees. We seek comment on the degree of flexibility that these regulations afford to providers of spectrum-based services in rural areas. Are there aspects of these rules that could be modified or made more flexible to encourage expanded service to rural areas while ensuring that services remain free of harmful interference? For example, would increasing permissible power levels be beneficial for particular types of services in areas where there is less spectrum congestion? Commenters should explain how their proposed changes would satisfy the goal of expanded rural service while not increasing the likelihood of harmful interference to existing licensees.

29. With respect to the Rural Radiotelephone Service, which includes BETRS, we note that as of November 2002, there were 67 active BETRS licenses with facilities in 17 states and 580 active Rural Radiotelephone licenses with facilities relatively uniformly spread throughout the continental United States. Of these, only one BETRS and two Rural Radiotelephone licenses were issued within the last two years. We seek comment on how we might revise the rules for these services to further facilitate the provision of wireless service to rural areas.

H. Unlicensed Spectrum

30. We also seek comment on the extent to which unlicensed spectrum is being used to provide wireless services to rural communities. We ask commenters to identify the service providers that are utilizing unlicensed spectrum and the types of services they are offering. Further, we seek comment regarding actions the Commission could take to encourage or facilitate the use of unlicensed spectrum. For example, unlicensed operation is generally limited to very low power levels in order to help ensure that the operation does not interfere with licensed services. However, the interference