

SCOPE AND AUTHORITY

§ 1.9001 Purpose and scope.

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. These spectrum leasing policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 26, 27, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

(b) Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier.

§ 1.9003 Definitions.

De facto transfer leasing arrangement. A spectrum leasing arrangement in which a licensee retains *de jure* control of its license while transferring *de facto* control of the leased spectrum to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

FCC Form 603. FCC Form 603 is the form to be used by licensees and spectrum lessees that enter into spectrum leasing arrangements pursuant to the rules set forth in this subpart. Parties are required to submit this form electronically when entering into spectrum leasing arrangements under this subpart, except that licensees falling within the provisions of §1.911(d) of subpart F of this part may file the notification either electronically or manually.

Long-term de facto transfer leasing arrangement. A long-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual term, or series of combined terms, of more than 360 days.

Short-term de facto transfer leasing arrangement. A short-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual or combined term of not longer than 360 days.

Spectrum leasing application. The application submitted to the Commission by a licensee and a spectrum lessee seeking approval of a *de facto* transfer leasing arrangement.

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee, pursuant to the rules set forth in this subpart. The arrangement may involve the leasing of any amount of licensed spectrum, in any geographic area or site encompassed by the license, for any period of time during the term of the license authorization. Two different types of spectrum leasing arrangements, spectrum manager leasing arrangements and *de facto* transfer leasing arrangements, are permitted under this subpart.

Spectrum leasing notification. The required notification submitted by a licensee to the Commission regarding a spectrum manager leasing arrangement.

Spectrum lessee. A third-party entity that leases certain spectrum usage rights from a licensee pursuant to the spectrum leasing rules set forth in this subpart.

Spectrum manager leasing arrangement. A spectrum leasing arrangement in which a licensee retains both *de jure* control of its license and *de facto* control of the leased spectrum that it leases to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

EFFECTIVE DATE NOTE: At 68 FR 66277, Nov. 25, 2003, §1.9003 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.9005 Included services.

The spectrum leasing policies and rules of this subpart apply to the following services in the Wireless Radio Services in which commercial or private licensees hold exclusive use rights:

- (a) The Paging and Radiotelephone Service (part 22 of this chapter);
- (b) The Rural Radiotelephone Service (part 22 of this chapter);
- (c) The Air-Ground Radiotelephone Service (part 22 of this chapter);
- (d) The Cellular Radiotelephone Service (part 22 of this chapter);

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(e) The Offshore Radiotelephone Service (part 22 of this chapter);

(f) The narrowband Personal Communications Service (part 24 of this chapter);

(g) The broadband Personal Communications Service (part 24 of this chapter);

(h) The Wireless Communications Service in the 698–746 MHz band (part 27 of this chapter);

(i) The Wireless Communications Service in the 746–764 MHz and 776–794 MHz bands (part 27 of this chapter);

(j) The Wireless Communications Service in the 1390–1392 MHz band (part 27 of this chapter);

(k) The Wireless Communications Service in the paired 1392–1395 MHz and 1432–1435 MHz bands (part 27 of this chapter);

(l) The Wireless Communications Service in the 1670–1675 MHz band (part 27 of this chapter);

(m) The Wireless Communications Service in the 2305–2320 and 2345–2360 MHz bands (part 27 of this chapter);

(n) The Wireless Communications Service in the 2385–2390 MHz band (part 27 of this chapter);

(o) The VHF Public Coast Station service (part 80 of this chapter);

(p) The 220 MHz Service (excluding public safety licensees) (part 90 of this chapter);

(q) The Specialized Mobile Radio Service in the 800 MHz and 900 MHz bands (including exclusive use SMR licenses in the General Category channels) (part 90 of this chapter);

(r) The Location and Monitoring Service (LMS) with regard to licenses for multilateration LMS systems (part 90 of this chapter);

(s) Paging operations under part 90 of this chapter;

(t) The Business and Industrial/Land Transportation (B/ILT) channels (part 90 of this chapter) (including all B/ILT channels above 512 MHz and those in the 470–512 MHz band where a licensee has achieved exclusivity, but excluding B/ILT channels in the 470–512 MHz band where a licensee has not achieved exclusivity and those channels below 470 MHz, including those licensed pursuant to 47 CFR 90.187(b)(2)(v));

(u) The 218–219 MHz band (part 95 of this chapter);

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(v) The Local Multipoint Distribution Service (part 101 of this chapter);

(w) The 24 GHz Band (part 101 of this chapter);

(x) The 39 GHz Band (part 101 of this chapter);

(y) The Multiple Address Systems band (part 101 of this chapter);

(z) The Local Television Transmission Service (part 101 of this chapter);

(aa) The Private-Operational Fixed Point-to-Point Microwave Service (part 101 of this chapter); and,

(bb) The Common Carrier Fixed Point-to-Point Microwave Service (part 101 of this chapter).

GENERAL POLICIES AND PROCEDURES

§ 1.9010 De facto control standard for spectrum leasing arrangements.

(a) Under the rules established for spectrum leasing arrangements in this subpart, the following standard is applied for purposes of determining whether a licensee retains *de facto* control under section 310(d) of the Communications Act with regard to spectrum that it leases to a spectrum lessee.

(b) A licensee will be deemed to have retained *de facto* control of leased spectrum if it enters into a spectrum leasing arrangement and acts as a spectrum manager with regard to portions of the licensed spectrum that it leases to a spectrum lessee, provided the licensee satisfies the following two conditions:

(1) *Licensee responsibility for lessee compliance with Commission policies and rules.* The licensee must remain fully responsible for ensuring the spectrum lessee's compliance with the Communications Act and all applicable policies and rules directly related to the use of the leased spectrum.

(i) Through contractual provisions and actual oversight and enforcement of such provisions, the licensee must act in a manner sufficient to ensure that the spectrum lessee operates in conformance with applicable technical and use rules governing the license authorization.

(ii) The licensee must maintain a reasonable degree of actual working knowledge about the spectrum lessee's activities and facilities that affect its