

ongoing compliance with the Commission's policies and rules. These responsibilities include: Coordinating operations and modifications of the spectrum lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual spectrum lessee stations (*e.g.*, those that require frequency coordination, submission of an Environmental Assessment under §1.1307 of subpart I of this part, those that require international or Interdepartment Radio Advisory Committee (IRAC) coordination, those that affect radio frequency quiet zones described in §1.924 of subpart F of this part, or those that require notification to the Federal Aviation Administration under part 17 of this chapter); and, ensuring that the spectrum lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation (*e.g.*, §1.1307(b) and related rules of subpart I of this part). The licensee is responsible for resolving all interference-related matters, including conflicts between its spectrum lessee and any other spectrum lessee or licensee (or authorized spectrum user). The licensee may use agents (*e.g.*, counsel, engineering consultants) when carrying out these responsibilities, so long as the licensee exercises effective control over its agents' actions.

(iii) The licensee must be able to inspect the spectrum lessee's operations and must retain the right to terminate the spectrum leasing arrangement in the event the spectrum lessee fails to comply with the terms of the arrangement and/or applicable Commission requirements. If the licensee or the Commission determines that there is any violation of the Commission's rules or that the spectrum lessee's system is causing harmful interference, the licensee must immediately take steps to remedy the violation, resolve the interference, suspend or terminate the operation of the system, or take other measures to prevent further harmful interference until the situation can be remedied. If the spectrum lessee refuses to resolve the interference, rem-

edy the violation, or suspend or terminate operations, either at the direction of the licensee or by order of the Commission, the licensee must use all legal means necessary to enforce compliance.

(2) *Licensee responsibility for interactions with the Commission, including all filings, required under the license authorization and applicable service rules directly related to the leased spectrum.* The licensee remains responsible for the following interactions with the Commission:

(i) The licensee must file the necessary notification with the Commission, as required under §1.9020(d).

(ii) The licensee is responsible for making all required filings (*e.g.*, applications, notifications, correspondence) associated with the license authorization that are directly affected by the spectrum lessee's use of the licensed spectrum. The licensee may use agents (*e.g.*, counsel, engineering consultants) to complete these filings, so long as the licensee exercises effective control over its agents' actions and complies with any signature requirements for such filings.

§ 1.9020 Spectrum manager leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains *de jure* control of the license and *de facto* control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section.

(b) *Rights and responsibilities of the licensee.* (1) The licensee is directly and primarily responsible for ensuring the spectrum lessee's compliance with the Communications Act and applicable Commission policies and rules.

(2) The licensee retains responsibility for maintaining its compliance with applicable eligibility and ownership requirements imposed on it pursuant to the license authorization.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee must comply with the Communications Act and with Commission requirements associated with the license.

(2) The spectrum lessee is responsible for establishing that it meets the eligibility and qualification requirements applicable to spectrum lessees under the rules set forth in this section.

(3) The spectrum lessee must comply with any obligations that apply directly to it as a result of its own status as a service provider (e.g., Title II obligations if the spectrum lessee acts as a telecommunications carrier or acts as a common carrier).

(4) In addition to the licensee being directly accountable to the Commission for ensuring the spectrum lessee's compliance with the Commission's operational rules and policies (as discussed in this subpart), the spectrum lessee is independently accountable to the Commission for complying with the Communications Act and Commission policies and rules, including those that apply directly to the spectrum lessee as a result of its own status as a service provider.

(5) In leasing spectrum from a licensee, the spectrum lessee must accept Commission oversight and enforcement consistent with the license authorization. The spectrum lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the licensee and to the extent that such suspension would be consistent with the Commission's suspension policies.

(6) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) *Applicability of particular service rules and policies.* Under a spectrum manager leasing arrangement, the service rules and policies apply in the

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 the denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (see §1.2001 *et seq.* of subpart P of this part).

(v) The licensee may reasonably rely on the spectrum lessee's certifications that it meets the requisite eligibility and qualification requirements contained in the notification required by this section.

(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.* 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 spectrum manager leasing arrangement with a spectrum lessee so long as doing so does not result in the spectrum lessee becoming a "controlling interest" (see §1.2110(c)(2) of subpart Q of this part) or affiliate (see §1.2110(c)(5) of subpart Q of this part) of the licensee such that the licensee would lose its eligibility as a

small business or entrepreneur. To the extent there is any conflict between the revised *de facto* control standard for spectrum leasing arrangements, as set forth in this subpart, and the definition of controlling interest (including its *de facto* control standard) set forth in §1.2110 of subpart Q of this part, the latter definition governs for determining whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the license or for other benefits such as bidding credits and installment payments.

(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 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 performance or build-out 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 manager 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 Private Mobile Radio Service (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 Commercial Mobile Radio Services (CMRS) pursuant to §1.1152 of subpart G of this part), the licensee and spectrum lessee are each required to pay fees for those units associated with its respective operations.

(9) *E911 requirements.* If E911 obligations apply to the licensee (*see* §20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum.

(e) *Notification regarding the spectrum manager leasing arrangement.* A licensee that enters into a spectrum manager leasing arrangement must notify the Commission of that arrangement in advance of operation, as set forth herein.

(1) *Notification procedures.* (i) The licensee must submit the notification to the Commission by electronic filing, 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. Except as provided in paragraph (e)(1)(ii) of this section, such notification must be submitted within 14 days of execution of the spectrum leasing arrangement and at least 21 days in advance of commencing operations.

(ii) For spectrum manager leasing arrangements of one year or less, the licensee must provide notification to the

Commission within 14 days of execution of the spectrum leasing arrangement and at least ten (10) days in advance of operation. If the licensee and spectrum lessee seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(2) *Application fees.* There are no application fees required for the filing of a spectrum manager leasing notification.

(3) *Public notice of notifications.* Notifications under this subpart will be placed on an informational public notice on a weekly basis (see §1.933(a) of subpart F of this part).

(4) *Contents of notification.* The notification must contain all information requested on the applicable form, FCC Form 603, and any additional information and certifications required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed.

(5) *Effective date of a spectrum manager leasing arrangement.* The spectrum manager leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, as of the beginning date of the term as specified in the spectrum leasing notification.

(f) *Commission termination of a spectrum manager leasing arrangement.* The Commission retains the right to investigate and terminate any spectrum manager leasing arrangement if it determines, post-notification, that the arrangement constitutes an unauthorized transfer of *de facto* control of the leased spectrum, is otherwise in violation of the rules in this chapter, or raises foreign ownership, competitive, or other public interest concerns. Information concerning any such termination will be placed on public notice.

(g) *Expiration, extension, or termination of a spectrum leasing arrangement.*

(1) Absent Commission termination or except as provided in paragraph (g)(2) or (g)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the

termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension within 14 days of execution of the extension and at least 21 days in advance of operation under the extended term.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(h) *Assignment of a spectrum leasing arrangement.* The spectrum lessee may assign its spectrum leasing arrangement to another entity provided that the licensee has agreed to such an assignment, is in privity with the assignee, and notifies the Commission at least 21 days before the consummation of the assignment, pursuant to the notification procedures set forth in this section. In the case of a *pro forma* assignment, the licensee may file the notification regarding the action subject to the rules and procedures regarding *pro forma* transactions applicable to licensees set forth in §1.948(c)(1) of subpart F of this part. The Commission will place information concerning a notification related to an assignment, whether substantial or *pro forma*, on public notice.

(i) *Transfer of control of a spectrum lessee.* The licensee must notify the Commission of any transfer of control of a spectrum lessee at least 21 days before the consummation of the transfer of control, pursuant to the notification procedures of this section. In the case of a *pro forma* transfer of control of the spectrum lessee, the licensee may file the notification regarding the action

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subject to the same rules and procedures regarding *pro forma* transactions applicable to licensees set forth in §1.948(c)(1) of subpart F of this part. The Commission will place information concerning a notification related to a transfer of control, whether substantial or *pro forma*, on public notice.

(j) *Revocation or automatic cancellation of a license or a spectrum lessee's operating authority.* (1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have any authority to operate under the license, except as provided in paragraph (j)(2) of this section.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (see §1.931 of subpart F of this part) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(k) *Subleasing.* A spectrum lessee may sublease the leased spectrum usage rights subject to the licensee's consent and the licensee's establishment of privity with the spectrum sublessee. The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the notification procedures set forth in this section.

(l) *Renewal.* A licensee and spectrum lessee that have entered into a spectrum leasing arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement during the term of the renewed license authorization. The licensee must notify the Commission of such an extension of the

spectrum leasing arrangement on the same application it submits for license renewal (see §1.949 of subpart F of this part).

EFFECTIVE DATE NOTE: At 68 FR 66277, Nov. 25, 2003, §1.9020 was added. Paragraph (e) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§1.9030 Long-term de facto transfer leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a long-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A "long-term" *de facto* transfer leasing arrangement has an individual term, or series of combined terms, of more than 360 days.

(b) *Rights and responsibilities of the licensee.* (1) Except as provided in paragraph (b)(2) of this section, the licensee is relieved of primary and direct responsibility for ensuring that the spectrum lessee's operations comply with the Communications Act and Commission policies and rules.

(2) The licensee is responsible for its own violations, including those related to its spectrum leasing arrangement with the spectrum lessee, and for ongoing violations or other egregious behavior on the part of the spectrum lessee about which the licensee has knowledge or should have knowledge.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee assumes primary responsibility for complying with the Communications Act and applicable Commission policies and rules.

(2) The spectrum lessee is granted an instrument of authorization pertaining