

extend the spectrum leasing arrangement beyond the 360-day limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in paragraphs (h)(2) and (h)(3) of this section.

(2) If a licensee that holds a license that continues to be subject to transfer restrictions and/or requirements relating to unjust enrichment pursuant to the Commission's small business and/or entrepreneur provisions (see §1.2110 of subpart Q of this part and §24.709 of this chapter) seeks to extend a short-term *de facto* transfer leasing arrangement with its spectrum lessee (or related entities, as determined pursuant to §1.2110(b)(2) of subpart Q of this part) beyond 360 days, it may convert its arrangement into a long-term *de facto* transfer leasing arrangement provided that it complies with the procedures for entering into a long-term *de facto* transfer leasing arrangement and that it pays any unjust enrichment that would have been owed had the licensee filed a long-term *de facto* transfer spectrum leasing application at the time it applied for the initial short-term *de facto* transfer leasing arrangement.

(3) The licensee and spectrum lessee are not permitted to convert a short-term *de facto* transfer leasing arrangement into a long-term *de facto* transfer leasing arrangement if the parties would have been restricted, in the first instance, from entering into a long-term *de facto* transfer leasing arrangement because of a transfer, use, or other restriction applicable to the particular service (see §1.9030).

(i) *Assignment of spectrum leasing arrangement.* The rule applicable to long-term *de facto* transfer leasing arrangements (see §1.9030(g)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(j) *Transfer of control of spectrum lessee.* The rule applicable to long-term *de facto* transfer leasing arrangements (see §1.9030(h)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(k) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority.* The rule applicable to long-term *de facto* transfer leasing

arrangements (see §1.9030(i)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(l) *Subleasing.* A spectrum lessee that has entered into a short-term *de facto* transfer leasing arrangement is not permitted to enter into a spectrum subleasing arrangement.

(m) *Renewal.* The rule applicable with regard to long-term *de facto* transfer leasing arrangements (see §1.9030(k)) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the extension of the short-term *de facto* transfer leasing arrangement into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed 360 days. 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, §1.9035 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.

§ 1.9040 Contractual requirements applicable to spectrum leasing arrangements.

(a) Agreements between licensees and spectrum lessees concerning spectrum leasing arrangements entered into pursuant to the rules of this subpart must contain the following provisions:

(1) The spectrum lessee must comply at all times with applicable rules set forth in this chapter and other applicable law, and the spectrum leasing arrangement may be revoked, cancelled, or terminated by the licensee or Commission if the spectrum lessee fails to comply with the applicable requirements;

(2) If the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission;

(3) The spectrum leasing arrangement is not an assignment, sale, or transfer of the license itself;

Federal Communications Commission

§ 1.9050

(4) The spectrum leasing arrangement shall not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the applicable rules as set forth in this subpart;

(5) The licensee shall not consent to an assignment of a spectrum leasing arrangement unless such assignment complies with applicable Commission rules and regulations.

(b) Agreements between licensees that hold licenses subject to the Commission's installment payment program (see §1.2110 of subpart Q of this part and related service-specific rules) and spectrum lessees must contain the following additional provisions:

(1) The express acknowledgement that the license remains subject to the Commission's priority lien and security interest in the license and related proceeds, consistent with the provisions set forth in §1.9045; and

(2) The agreement that the spectrum lessee shall not hold itself out to the public as the holder of the license and shall not hold itself out as a licensee by virtue of its having entered into a spectrum leasing arrangement.

§1.9045 Requirements for spectrum leasing arrangements entered into by licensees participating in the installment payment program.

(a) If a licensee that holds a license subject to the Commission's installment payment program (see §1.2110 of subpart Q of this part and related service-specific rules) enters into a spectrum leasing arrangement pursuant to the rules in this subpart, the licensee remains fully and solely responsible for the outstanding debt amount owed to the Commission. Nothing in a spectrum leasing arrangement, or arising from a spectrum lessee's bankruptcy or receivership, can modify the licensee's sole responsibility for its obligation to repay its entire debt obligation under the installment payment program pursuant to applicable Commission rules and regulations and the associated note(s) and security agreement(s).

(b) If a licensee holds a license subject to the installment payment program (see §1.2110 of subpart Q of this part and related service-specific rules), the licensee and spectrum lessee

may effectuate a spectrum leasing arrangement with respect to that license only insofar as Commission-required and approved note(s) and security agreement(s) have been executed that expressly establish, in the context of a spectrum leasing arrangement, the licensee's sole responsibility and obligation to repay the entire amount of its debt obligations to the Commission relating to the license.

§1.9050 Who may sign spectrum leasing notifications and applications.

Under the rules set forth in this subpart, certain notifications and applications to the Commission must be filed by licensees and spectrum lessees that enter into spectrum leasing arrangements. In addition, the rules require that certain notifications and applications be filed by the licensee and/or the spectrum lessee after they have entered into such arrangements. Whether the signature of the licensee, the spectrum lessee, or both, is required will depend on the particular notification or application involved, and whether the leasing arrangement concerns a spectrum manager leasing arrangement or a *de facto* transfer leasing arrangement.

(a) Except as provided in paragraph (b) of this section, the notifications, applications, amendments, and related statements of fact required by the Commission (including certifications) must be signed as follows (either electronically or manually, see paragraph (d) of this section):

(1) By the licensee or spectrum lessee, if an individual;

(2) By one of the partners if the licensee or lessee is a partnership;

(3) By an officer, director, or duly authorized employee, if the licensee or lessee is a corporation; or

(4) By a member who is an officer, if the licensee or lessee is an unincorporated association.

(b) Notifications, applications, amendments, and related statements of fact required by the Commission may be signed by the licensee or spectrum lessee's attorney in case of the licensee's or lessee's physical disability or absence from the United States. The