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Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; Proposed Rule and Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 20, 21, 22, 24, 25, 27, 74, 78, 80, 87, 90, 95, 97, and 101

[WT Docket No. 00–230; FCC 03–113]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document we seek comment on several actions the Commission could take to further enhance spectrum access and efficient use of spectrum through the development of more robust secondary markets in spectrum usage rights in the wireless radio and satellite services. We also seek comment on how to encourage the development of information and clearinghouse mechanisms that will facilitate secondary market transactions between licensees and new users in need of access to spectrum. Finally, we seek comment on further streamlining of application processing for spectrum leasing, transfer of control, license assignments, expanding leasing to additional services, and modifying or eliminating other regulatory barriers impeding secondary market transactions.

DATES: Comments by the public on the proposals set forth in the Further Notice of Proposed Rulemaking (*Further NPRM*) are due December 5, 2003. Reply comments are due January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Murray, Wireless Telecommunications Bureau, at (202) 418–7240, or via the Internet at *Paul.Murray@fcc.gov;* for additional information concerning the information collections contained in this document, contact Judith-B. Herman at (202) 418–0214, or via the Internet at *Judith.B-Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further NPRM* portion of the Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 03–113, in WT Docket No. 00–230, adopted on May 15, 2003, and released on October 6, 2003. Contemporaneous with this document, the Commission issues a Report and Order (published elsewhere in this publication). The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

Synopsis of the Further NPRM

I. Introduction

A. Wireless Radio Services

1. We adopt a Further Notice of Proposed Rulemaking (*Further NPRM*) that proposes several actions the Commission could take to further enhance spectrum access and efficient spectrum use on a wider scale following adoption of the *Report and Order* in this proceeding. We seek comment on how to encourage the development of information and clearinghouse mechanisms that will facilitate secondary market transactions between licensees and new users in need of access to spectrum. We also seek comment on further streamlining of application processing for spectrum leasing, transfers of control, and license assignments, expanding leasing to additional services not covered by the *Report and Order,* and modifying or eliminating other regulatory barriers impeding secondary market transactions.

B. Satellite Services

2. In the *Further NPRM,* we further explore and seek comment on improving access to unused or underutilized satellite spectrum through secondary markets.

II. Background

3. In November 2000, the Commission concurrently adopted the *Policy Statement* and the *Notice of Proposed Rulemaking* (*NPRM*), 65 FR 81475 (December 26, 2000) in this proceeding regarding secondary markets in spectrum usage rights. The *Policy Statement* enunciated general goals and principles for the further development of those secondary markets, while the *NPRM* proposed concrete steps the Commission might take to implement such policies with respect to Wireless Radio Services and Satellite Services. Thirty-seven parties commented on the proposals set forth in the *NPRM,* and twenty-one filed reply comments.

4. In 2002, the Commission's staff-level Spectrum Policy Task Force undertook a comprehensive review of spectrum policy. In examining 90 years of spectrum policy, the Task Force sought to assist the Commission in developing policies that are more responsive to the consumer-driven evolution of new wireless technologies, devices, and services. The findings and recommendations submitted to the Commission in November 2002 in the *Spectrum Policy Task Force Report* addressed many issues relevant to the promotion of secondary markets in spectrum usage rights.

5. Concurrent with the adoption of the *Further NPRM,* and as part of the same document, we adopted a Report and Order portion (*Report and Order*), in which we take several actions to remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights in the Wireless Radio Services. Specifically, in the *Report and Order,* we take several steps to facilitate and streamline the ability of spectrum users to gain access to licensed spectrum by entering into spectrum leasing arrangements that are suited to the parties' respective needs. As a threshold matter, we revise the Commission's interpretation of the *de facto* control standard relating to section 310(d) of the Communications Act, 47 U.S.C. 310(d), in the context of spectrum leasing, replacing the standard that has been in place since 1963 under the *Intermountain Microwave* decision, 12 FCC 2d 559 (1963), with a refined standard that better accords with our contemporary market-oriented spectrum policies, fast-changing consumer demands, and technological advances. The *Intermountain Microwave* standard, which focuses its *de facto* control analysis on whether licensees exercise close working control over all of the facilities using licensed spectrum, is not required by the Communications Act. Moreover, this standard impedes innovative and efficient leasing arrangements with third party spectrum users that do not require Commission approval under the statute. The updated standard we adopt today for leasing refines the *de facto* control analysis, consistent with statutory requirements, by focusing instead on whether licensees continue to exercise effective working control over any spectrum they lease to others.

6. In the *Report and Order,* we implement two different options for spectrum leasing. One option enables licensees and ''spectrum lessees'' to enter into leasing arrangements, without the need for Commission approval, so long as the licensee retains *de facto* control of the leased spectrum under the newly refined standard. The other option permits parties to enter into arrangements in which the licensee transfers *de facto* control to the lessee

pursuant to streamlined approval procedures.

7. In addition, consistent with our efforts to facilitate secondary markets in spectrum by providing for streamlined approval procedures for certain spectrum leasing arrangements that involve transfers of *de facto* control, the *Report and Order* implements similar streamlined Commission approval procedures for all license assignments (whether a full or partial assignment of the license) and transfers of control in the same Wireless Radio Services covered by our newly adopted spectrum leasing policies.

III. Further Notice of Proposed Rulemaking

8. We recognize that the steps taken in the *Report and Order* are limited in scope, addressing only the legal framework for certain types of leasing transactions involving exclusive use wireless licenses. In order to facilitate secondary markets and improve opportunities for more users to gain access to spectrum, we believe we must provide a greater range of incumbent licensees with the requisite regulatory framework as well as the practical capability and economic incentive to permit access to unused spectrum encompassed within their authorizations. Thus, additional actions by the Commission are needed to further promote more flexible and, ultimately, more efficient use of the spectrum, with significant public interest benefits.

A. Achieving a More Efficient Spectrum Marketplace

1. The Commission's Role in Providing Secondary Market Information and Facilitating Exchanges

9. In the *Policy Statement,* we observed that the market for spectrum, unlike the market for most other goods and services, lacks an efficient means for identifying buyers and sellers, comparing prices, and completing transactions. We also noted that negotiation for spectrum transactions can be complicated by the Commission's technical and service rules, and that approval of transactions by the Commission can involve complex submissions in a time-consuming and expensive process for the parties involved.

10. Our vision for the future spectrum marketplace presumes that access to adequate information is essential for ensuring that improved secondary markets achieve the highest benefit for spectrum users and consumers. Entities desiring to obtain access to spectrum must be able to identify the potential suppliers of that access, and we seek to ensure that the costs of obtaining such information and entering into transactions governing spectrum access are not driven by regulatory constraints.

11. There are a variety of approaches the Commission could pursue to promote access to spectrum information needed in the secondary marketplace. The simplest of these approaches—maintaining an on-line database of licensees, lessees, and certain other types of users—is most readily facilitated by Commission action. Specifically, because the Commission is responsible for issuing spectrum licenses and enforcing its rules and policies, it necessarily must collect certain basic and pertinent information, such as the names of licensees and the geographic areas and frequency bands for which they hold their authorizations.

12. In the *Report and Order,* we provide for the public availability of this type of information in the leasing context. Based on the notifications and applications required to be filed by licensees and spectrum lessees, the ULS database will contain information on, *inter alia,* the identity of each licensee and spectrum lessee, licensee and lessee contact information, the spectrum and geographic area encompassed within the lease, and the term of the lease. We ask parties to comment on whether collection of this type of information by the Commission is sufficient to provide potential users of spectrum with adequate information about possible spectrum lease opportunities. Should we collect additional information from licensees, spectrum lessees, or any other authorized users about the nature of their operations (*e.g.*, more detail about the geographic area actually covered and the frequencies actually used)? Would the collection of more detailed operational information be burdensome for affected parties? Does the Commission receive information through any other data gathering requirements that might be useful for secondary market purposes? In addition, we ask parties about their experience in searching on ULS and how to ensure that it is a useful tool for researching secondary market opportunities.

13. We also seek comment on whether and to what extent the Commission should support or encourage the establishment of additional information services, such as listing offers to transfer, assign, or lease, establishing exchange mechanisms, or brokering exchanges. As a general matter, we continue to believe that the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that might be available for use by third parties. We seek comment on the likelihood that private sector mechanisms will develop for the collection and dissemination of secondary market information.

14. We also request comment on the potential for independent third parties, *i.e.*, parties other than licensees and potential lessees, to emerge as ''market-makers'' that not only collect and disseminate information, but actually negotiate, broker, or otherwise facilitate spectrum leasing transactions. We ask interested parties to comment whether they think there is a useful role to be played by market-makers in facilitating secondary markets and increased access to unused spectrum. Are such facilitators necessary? If so, will they emerge naturally as rules allowing secondary market trading are established, or are there steps the Commission should take to promote them? If the Commission takes steps to promote market-makers, what steps should it take?

15. Finally, if interested parties have any alternative proposals for facilitating operation of the marketplace in spectrum capability, we request that they outline and describe such alternatives.

2. Developing Policies That Maximize Potential Public Benefits Enabled by Advanced Technologies, Including Opportunistic Devices

16. Both the *Policy Statement* and the *Spectrum Policy Task Force Report* emphasize that emerging technologies are creating significant new opportunities for enabling more intensive and efficient use of spectrum. In particular, these developments increasingly allow more users the technical ability to access unused spectrum in different bands for short periods of time, and to do so with more tolerance of interference than in the past. The Spectrum Policy Task Force noted that the increased use of digital technologies in general, and specific advances in software-defined radio, frequency-agile radio, and spread spectrum technologies, were creating new opportunities for spectrum access and use. Both the *Policy Statement* and the *Spectrum Policy Task Force Report* noted that these technological advances have important implications with respect to the nature of policies the Commission might adopt to facilitate access to spectrum, including access via secondary markets. Both recommended that the Commission develop licensing

and access models that take this new technological potential into account.

17. We seek comment here on additional steps that the Commission can take to implement spectrum licensing policies that eliminate unnecessary regulatory barriers and promote the potential public benefits made possible by this increasingly dynamic and innovative nature of spectrum use. We agree with the *Spectrum Policy Task Force Report* that these technological advances potentially provide several answers to current and future spectrum policy challenges. In particular, they make possible more intensive and efficient use of spectrum. They also allow operators to take advantage of the time dimension of the radio spectrum, which could enable additional access to spectrum for more users and services.

18. We also request comment on the recommendations made in the *Spectrum Policy Task Force Report* regarding Commission policies on access to spectrum as provided by opportunistic devices in currently licensed bands. In particular, we propose to move forward with the Task Force's general recommendation that, with regard to currently licensed bands, the Commission focus on advancing and improving a secondary markets approach to access to spectrum by opportunistic devices during the near term. Under this approach, the Commission initially would look to promote secondary markets through multiple steps, the first of which we are taking in the *Report and Order*.

19. The *Spectrum Policy Task Force Report* noted that a secondary markets approach did not necessarily require that the prospective opportunistic user negotiate individually with each affected licensee. It suggested that other mechanisms, such as band managers, frequency coordinators, and other intermediaries such as clearinghouses, could possibly manage the secondary uses on licensees' behalf. We seek comment on the possible use of any or all of these mechanisms, and how any such tool should be structured by the Commission.

20. Finally, we seek comment on whether the policies and procedures adopted in the *Report and Order* provide sufficient flexibility for dynamic leasing arrangements involving opportunistic uses of currently licensed spectrum bands. If not, we seek comment on additional steps the Commission should take consistent with our statutory authority. To facilitate secondary access by opportunistic devices, should the Commission more exhaustively define the nature of the rights embodied in ''exclusive use'' licenses in the Wireless Radio Services?

B. Forbearance From Individualized Prior Commission Approval for Certain Categories of Spectrum Leases and Transfers of Control/License Assignments

21. The *Report and Order* takes significant steps to facilitate certain categories of spectrum leasing and to reduce the regulatory process requirements that can delay the timely implementation of business arrangements, increase transaction costs, and present potential regulatory uncertainty. Despite these advancements, however, we are concerned that even the streamlined regulatory process we have established for *de facto* transfer leasing may raise unnecessary hurdles for transactions that we could find, as a categorical determination, are consistent with the public interest.

22. Similarly, we have adopted policies in the *Report and Order* that should significantly streamline and facilitate the regulatory process applicable to transfers of control and license assignments in a significant number of our Wireless Radio Services. Nevertheless, we continue to consider additional actions we might take to minimize any unnecessary regulatory impediments to the effectuation of marketplace transactions while ensuring that we satisfy our statutory obligations relevant to license transfers of control and assignments.

23. The record before us suggests the need to explore in greater detail how to grant increased flexibility to parties to design leasing arrangements that are responsive to their business needs and to implement them without facing unnecessary regulatory delays. We also want to assess whether the public interest objectives and policy goals that underpin any revised approach to *de facto* transfer leasing that we may adopt are also applicable to some categories of outright license transfers and assignments. As part of this examination, we will assess whether, in light of all relevant statutory and public interest factors, we should strive to provide some parity in treatment between lease arrangements that involve a transfer of *de facto* control and full assignment of licenses and transfers of licensee control. This review thus must assess the possible applicability of forbearance or other streamlining steps to transaction applications.

24. *Forbearance standard.* Section 10 of the Communications Act authorizes the Commission to forbear from applying any provision of the Communications Act with respect to telecommunications carriers or telecommunications services (or a particular class thereof), provided a three-pronged test is satisfied. Wireless radio service licensees that are telecommunications carriers, as defined by the Act, or otherwise provide commercial mobile radio services (CMRS) and common carrier-based services, fall within the scope of the Commission's statutory forbearance authority. The forbearance proposals we describe with respect to spectrum leasing thus would be applicable only to entities and services meeting this test. Regulatory processing of leasing transactions involving spectrum and authorizations restricted to private use would not be encompassed within any forbearance-based structure we may adopt.

25. In determining whether forbearance from the prior approval processes is consistent with the public interest, the Commission must consider whether forbearance will promote competitive market conditions, including whether it will enhance competition among telecommunications service providers. If the Commission determines that forbearance will promote competition among providers of telecommunications services, that determination may be the basis for finding that forbearance is in the public interest (one of the three prongs of the test).

1. Forbearance With Respect to Certain Spectrum Leasing Arrangements

26. We seek comment on whether to forbear from individual prior review and approval by the Commission for certain categories of leasing arrangements involving a transfer of *de facto* control that would not raise any public interest concerns. We propose particular benchmarks or elements for leasing transactions (related to the public interest concerns we generally consider in evaluating transactions involving a transfer of *de jure* and/or *de facto* control) that would, if satisfied, allow spectrum lease agreements to be handled under the forbearance model we propose in this *Further NPRM.* We also seek comment on appropriate notification requirements for leases that would not be subject to individualized prior approval under this proposal.

a. Elements of Leasing Transactions That Would Not Require Prior Commission Approval

27. We propose to forbear from the requirements of sections 308, 309, and 310(d) of the Communications Act to the extent necessary to permit us to

process notification filings regarding leases involving a transfer of *de facto* control that satisfy the conditions enunciated in this section without 30 days prior public notice and without prior Commission review and consent. Rather, as discussed below, the parties to the leasing arrangement would be required to file a notification with the Commission within 14 days of execution of the lease. Responsibility for compliance with Commission rules, resolving interference issues, and making Commission filings would shift to the lessee, in the same manner as described under the *de facto* transfer leasing model in the Report and Order above.

28. *The lessee must satisfy applicable eligibility and use restrictions associated with the leased spectrum.* For a leasing agreement to be eligible for processing pursuant to this forbearance proposal, the lessee would be required to meet any applicable eligibility limitations and comply with any use restrictions associated with the spectrum it plans to lease. A lessee would also have to meet our basic qualification requirements for holding an authorization.

29. We seek comment on this proposed element. We note that inclusion of this element does not stand as an absolute bar to a lease contemplating spectrum usage that is inconsistent with applicable regulations but only serves to prevent such a lease proposal from being implemented without prior public notice or Commission review. We believe that, at present, such proposals should be subject to Commission review and evaluation before the lease is implemented. Is there any way to permit greater flexibility in lessee use of spectrum with forbearance-based notification without undermining other policies adopted by the Commission? Do retaining use and eligibility restrictions for lessees as a condition of permissible forbearance processing serve as a significant barrier to implementation of spectrum leases?

30. While we propose to require a lessee to meet any eligibility limitations applicable to the licensee from which it is leasing spectrum, we request comment about how to apply this objective, if we adopt it, in the context of licensees that are designated entities and/or entrepreneurs. Should we require a lessee to be eligible for the same level of competitive bidding benefits, such as bidding credits, as the licensee from which it is leasing? Should we require only that the lessee be qualified to hold the license? If so, do we impose unjust enrichment obligations on a lessee that is qualified for a lesser level of competitive bidding benefits? How do we ensure that the Commission has an opportunity to calculate and collect any unjust enrichment payments?

31. *The lessee must comply with the foreign ownership provisions applicable to Commission licensees.* In order for parties to a lease to avail themselves of forbearance processing as discussed in this *Further NPRM,* we first propose that, for a lease involving any radio authorization, the lessee not be a foreign government or the representative thereof. This limitation is derived from section 310(a), which is an absolute ban on foreign government holding of Commission radio authorizations. Second, for leases involving common carrier radio authorizations, we propose that the lessee must meet the requirements of sections 310(b)(1) through (3), *i.e.,* it must not be an alien or a representative thereof, a corporation organized under the laws of any foreign government, or have more than 20 percent direct foreign ownership. Third, we propose that, as a condition of eligibility for forbearance, the lessee must not have more than 25 percent indirect foreign ownership, or must have previously obtained a declaratory ruling from the Commission in advance of entering into the subject lease that its lease of the spectrum at issue is consistent with the Commission's foreign ownership policies.

32. We request parties to address the merits of applying the proposed foreign ownership conditions. Do the conditions ensure that we are meeting our obligations to enforce and apply sections 310(a) and (b) in the context of spectrum leases that we allow to proceed without individualized prior Commission approval of a lease arrangement? What risk exists that parties could attempt to escape the applicability of the foreign ownership limitations by implementing a lease following only notification to the Commission? Conversely, is this element too strict in terms of applying our foreign ownership policies? Is there any way we can expand the scope of permissible indirect foreign ownership in lessees where we are not individually reviewing the application?

33. We note that, as part of our foreign ownership review process, we coordinate with Executive Branch agencies to ensure that the level and identity of the foreign ownership does not present any concerns with respect to national security, law enforcement, foreign policy, or trade policy. We seek comment on whether our proposed foreign ownership conditions for forbearance raise any questions concerning enforcement of national security, law enforcement, foreign policy, or trade policy by Executive Branch agencies. What steps do we need to take to ensure that national security and other concerns addressed by Executive Branch agencies are satisfactorily handled? We note that no Executive Branch agencies provided comments for the record on this issue and particularly seek their input at this time.

34. *The spectrum lease arrangement must not raise any competitive concerns.* The Commission acknowledges in the *Report and Order* the potential competitive effects that may be associated with a spectrum lease. We seek to clarify under what conditions leases would not pose any significant risk to our competition policies such that we would allow these transactions to proceed without individual Commission review and approval. We note that to the extent we can create more certainty for the parties involved in transactions, we are more likely to promote efficient secondary markets.

35. The benchmarks under which we would allow spectrum leases to proceed without prior Commission approval must consider the competitive effects on both the input and output markets. The input market looks at the spectrum and the number of licensees in an area, while the output market concerns itself with wireless service and the number of entities actually providing service. If concentration increases in the output market (*i.e.,* the number of service providers decreases) as a result of a transaction, there is a potential that higher prices may be charged to consumers. If concentration in the input market increases (*i.e.,* fewer licensees), then there is a potential that higher prices will be charged to the actual providers of service for use of the spectrum, also leading to higher prices to consumers.

36. For the output market, we look at the effect on service providers. We propose that, in order to be eligible for forbearance processing under this proposal, a spectrum lease arrangement must not result in the loss of service in any geographic area by an independent, facilities-based CMRS provider involved in the transaction. We note that this requirement should impose no burden on spectrum licensees that provide service in a given market and that simply wish to lease unused portions of their spectrum. Nor should this requirement burden licensees that have not constructed and are therefore not providing service. The only effect of this condition should be on a licensee that

is providing service and that, as a result of a contemplated lease, would cease to provide such service. We decline, at this time, to forbear from review of this latter class of leases. We request comment whether this is an appropriate safe harbor or whether some other benchmark would more effectively serve the public interest while ensuring that spectrum lease applications processed pursuant to forbearance-based procedures do not pose unacceptable threats to our competition policies. If we adopt this or another safe harbor, we request comment whether we should require the licensee, the lessee, or both to certify that the lease would not result in the loss of an existing, independent competitor in the geographic area encompassed within the lease.

37. For the input market, we consider the potential competitive effects by looking at the amount of spectrum held by the parties involved in the lease. For leases involving a transfer of *de facto* control, we propose to consider the lessee as having influence over the spectrum encompassed within the subject lease agreement. In the case of *de facto* transfer leasing, the lessee is gaining sufficient control of the spectrum to be able to affect competition in the geographic area encompassed by the lease. Although the Commission has eliminated the spectrum cap it applied to certain CMRS offerings and replaced it with a case-by-case examination of the competitive effects of a proposed transaction, we believe that a defined, readily understood benchmark is necessary in this context. Identifying a readily ascertainable safe harbor provides certainty to parties. We request commenters to provide us with recommendations for a safe harbor definition that satisfies these objectives, including a discussion of how the proposed safe harbor level will ensure that no significant competitive issues are posed by a particular lease transaction.

38. We note that our prior spectrum cap addressed only CMRS offerings, which are a subset of the wireless services to which we are proposing to extend the opportunity to implement spectrum leases without advance individualized review by the Commission. As a supplement to or replacement of a defined CMRS benchmark, we could specify that a lessee have an attributable interest in no more than a specified amount of common carrier wireless spectrum in the geographic market. We request commenters endorsing a limitation based on total common carrier wireless spectrum to discuss the appropriate level and the justification for their recommendation.

39. We request comment on these proposals for ensuring that spectrum leases for which we no longer require prior individualized review and approval do not raise competitive issues. With regard to competitive issues, do we need to be concerned only about CMRS spectrum? Are there any individual services covered by our proposals in this *Further NPRM* for which we need to be concerned about potential anticompetitive effects resulting from aggregation of spectrum? Are there other groups of services (similar to the services previously covered by the CMRS spectrum cap—PCS, cellular, and certain SMR spectrum) for which we should establish a total spectrum aggregation benchmark in order to prevent any adverse competitive effects stemming from spectrum leases implemented without prior Commission approval? How should we account for leases of private spectrum in this competitive benchmark setting? How should we determine what spectrum is attributable to a particular entity for competition analysis purposes? Should we consider a test based on ''significant influence'' over the spectrum?

40. When combined with our benchmark protecting the level of competition in the output market, is a benchmark tied to level of spectrum aggregation, whether for CMRS only, other sets of services, or common carrier wireless services generally, an appropriate means for enforcing our competition policies in the context of spectrum leases that may proceed without prior Commission review and approval? We seek to ensure that any benchmarks we define are not too restrictive and thus likely to impede marketplace arrangements that do not raise any competitive concerns. Conversely, we wish to avoid benchmark levels that present unacceptable levels of competitive risk. Is there a better way to define a competitive benchmark?

41. *Addressing any other public interest concerns associated with spectrum leases implemented pursuant to forbearance procedures.* Finally, we seek comment on whether spectrum leasing arrangements involving transfers of *de facto* control may raise any other public interest concerns that we need to address in defining those types of leases that could be implemented without individualized prior approval under an exercise of our forbearance authority. We request that commenters identifying any other relevant public interest considerations discuss whether those concerns can be addressed by some form of benchmark or safe harbor, and what that benchmark or safe harbor might be.

42. Are these proposed prerequisites to spectrum leasing sufficiently clear to permit licensees and lessees to readily comply with them and to provide the information required by a modified Form 603 that we would employ for purposes of notifying us of a spectrum lease? Are there any steps we can take to simplify any of these benchmarks and to facilitate licensee/lessee compliance therewith?

43. Under the proposed forbearance model, parties would be able to implement a lease after filing the required notification and without any prior Commission review necessarily having occurred. The Commission and members of the public would be allowed to review the notification and the Commission could request additional information from the parties if so warranted. As a result, could forbearance processing undercut our ability to enforce our policies? What actions can and should we take in response to a spectrum lease that is improperly implemented under our forbearance processing proposal?

b. Notification

44. As part of our forbearance proposal, we propose that the parties to a spectrum lease arrangement that qualifies for forbearance be required to file, within 14 days of executing the lease, a notification with the Commission similar to that filed by parties to a *pro forma* assignment or transfer of control, including the date on which the parties expect to put the lease into effect. The notifications would be placed on an informational public notice on a weekly basis, and would be ''deemed approved'' as of the date of the public notice. We seek comment on this proposal as well as any other proposal that commenters might suggest.

45. We note that by placing the notifications on public notice, we provide members of the public with the opportunity to scrutinize such filings, similar to our handling of notifications concerning *pro forma* transfers of control and assignment of licenses. Any interested party would be entitled, consistent with our rules and policies concerning standing, to file a petition for reconsideration within 30 days of the date of that informational public notice. Similarly, Commission staff would be able to reconsider the grant on its own motion within 30 days of the public notice date, and the Commission would be able to reconsider the grant on

its own motion within 40 days of the public notice date.

46. We note that we want to ensure that we have sufficient information about lease arrangements in order to effectuate our public interest responsibilities while minimizing the burden on the filing parties in terms of the information they must submit to the Commission. Accordingly, we request parties to discuss the types of information and level of detail that should be included in leasing notifications filed in accordance with this proposed procedure. How much detail should the parties provide regarding the ownership and affiliates of a lessee? What information should the parties provide about any spectrum overlaps created by a spectrum lease?

c. Compliance With the Forbearance Standard

47. As noted above, forbearance from prior approval for spectrum leases involving a transfer of *de facto* control would be available only where telecommunications carriers and telecommunications services are involved in the transaction. We believe that, if we establish the benchmarks outlined above or something comparable, forbearing from the public notice and prior approval requirements would meet the test imposed by section 10.

48. We request commenters to address whether the conditions we have proposed above for permitting leases to proceed without prior public notice and Commission review and approval satisfy the section 10 requirements to support adoption of forbearance. Specifically, have we accurately assessed satisfaction of the section 10 requirements in this context? Can parties provide any further explanation why forbearance from the 30-day public notice period and individualized prior Commission review and approval supports a finding that the section 10 test has been met? Are there other factors that need to be assessed in making the section 10 determination? To the extent parties suggest alternative or additional conditions and benchmarks to be used to define leasing arrangements that can be processed on a forbearance basis, we request that they address in detail the section 10 implications of their proposals.

2. Eliminating Prior Commission Approval for Spectrum Leases Involving Non-Telecommunications Carriers and Non-Telecommunications Services

49. Because our section 10 forbearance authority applies only to providers of telecommunications services, we may forbear from applying section 310(d) requirements only for leases involving telecommunications carriers and telecommunications services. Nevertheless, we wish to explore whether we can provide similar relief to parties whose lease transactions otherwise meet the conditions we have proposed above for forbearance processing but do not fall within the scope of section 10. We believe such action is necessary and appropriate in order to place substantively similar wireless transactions involving different types of licenses on a comparable basis and to minimize unnecessary regulatory discrimination.

50. As a practical matter, many licenses that are beyond the scope of section 10 are not subject to the statutory requirement of 30 days public notice prior to Commission approval, which applies only to common carrier and broadcast licenses. Nonetheless, section 310(d) requires prior Commission review and approval of all transaction applications involving non-common carrier and non-broadcast licenses (as well as applications involving common carrier and broadcast licenses). While the review period may be shortened because the 30-day public notice period is not required as part of that process, the requirement of prior Commission approval can still cause delays and costs for parties seeking to enter into such transactions, many of which raise no significant public interest issues.

51. We therefore seek comment on whether and how the Commission can structure its review to minimize possible delays in processing time for leases involving non-telecommunications carriers and non-telecommunications services. (We note that this proposal encompasses only services covered by the *Report and Order* and services that might be added pursuant to this *Further NPRM.* Are there policy or legal barriers to designating additional categories of leases involving non-telecommunications carriers and non-telecommunications services that would not be subject to prior approval? Do we have authority to take action under other existing provisions of the Communications Act? Are there any other steps we can take in our processing of spectrum lease applications and/or notifications related to such facilities to help place these types of filings on comparable footing with spectrum leases involving only telecommunications services and telecommunications carriers?

3. Forbearance With Respect to Certain Transfers and Assignments

52. We seek to promote secondary markets generally. Secondary markets include not only spectrum leasing arrangements but also transfers of control of licensees and assignment of licenses. In order to not distort the marketplace in favor of spectrum leases and against transfers or assignments that might otherwise be pursued as a matter of sound business decision-making, we believe it is important to ensure that leases involving the temporary transfer of *de facto* control and transfers and assignments involving the permanent transfer of *de facto* and *de jure* control are treated consistently to the extent feasible under our statutory obligations. We further believe that many of the same policy and public interest considerations that apply in the leasing context are equally applicable to transfers and assignments. Accordingly, we seek comment in this section on whether to use our forbearance authority to permit certain transfers of control and assignment of licenses to proceed without prior individualized Commission review and consent, based on benchmarks similar to those we propose to use in the leasing context. We ask parties to address whether the differences between a transfer of *de jure* and *de facto* control, on the one hand, and the transfer of *de facto* control alone pursuant to a lease agreement, on the other hand, warrant similar or distinct regulatory treatments. In addition to the fact that one type of transaction involves a transfer of *de jure* control, we note that such a transfer also is irrevocable. Under a lease, in contrast, the licensee retains an interest in the authorization and may revoke the lease under the terms agreed to by the parties or as prescribed by our rules and policies.

53. Specifically, we seek comment on whether transfers of control and assignment of licenses (including applications proposing to disaggregate spectrum and/or partition a geographic area, or a partial assignment) meeting certain conditions or benchmarks could be eligible for a forbearance-based notification-only consent process. Could we determine that prior review of such transactions is not necessary to fulfill our public interest duties and goals? Clearly, any transfer and assignment arrangements found to be eligible for forbearance-based regulatory processing must be subject to appropriate conditions to ensure that crucial Commission policies are not thwarted by means of secondary market arrangements. Would allowing these categories of transactions to proceed

with a minimum of regulatory cost and delay facilitate the movement of spectrum in the secondary market to its highest valued use, improve efficient use of spectrum, increase opportunities for access to spectrum where needed, and benefit wireless consumers by enhancing the services made available to them?

54. If we were to permit transfers of control and assignment of licenses to proceed on a notification-only basis, we request comment on transactions involving unjust enrichment payments and/or the assumption by a transferee or assignee of the licensee's installment payment plan terms. Under such a regulatory structure, should the presence of either one or both of these factors disqualify a transfer of control or assignment of license from processing under our forbearance procedures? Alternatively, would we be able to build a process for determining the amount of the applicable unjust enrichment payment as well as preparing and signing the documents necessary for a transferee or assignee to assume some portion or all of a licensee's installment payment obligations that ensures that these efforts do not unduly delay implementation of a lease agreement while affording the Commission sufficient time to act?

55. If we were to allow transfers of control and assignment of licenses to proceed without prior Commission approval, what safe harbors or conditions should we impose to ensure that our public interest objectives are not impeded by permitting such transactions to proceed without individualized Commission review? We could apply the same conditions and elements set forth above for spectrum lease arrangements, including: the transferee or assignee must satisfy applicable eligibility and use restrictions associated with the licensed spectrum; the transferee or assignee must comply with the foreign ownership requirements applicable to Commission licensees; the transfer or assignment must not raise any competitive concerns; and, the transfer or assignment must not raise any other public interest concerns, to the extent we determine we need to adopt any other benchmarks or conditions.

56. We request commenters to assess the appropriateness of each of these conditions in applying forbearance from prior public notice and Commission consent to transfers of control and assignment of licenses. Further, the same questions raised regarding these conditions and benchmarks in the context of spectrum leasing eligible for forbearance processing are applicable in this context, and we request interested parties to address those matters here as well. In particular, would forbearance from prior Commission approval for transfers and assignments that meet these conditions facilitate our objectives for development of secondary markets? Would comparability of treatment between spectrum leases, on the one hand, and transfers of control and license assignments, on the other hand, help promote a marketplace that provides incentives to parties to employ the most appropriate arrangements and more effectively drive spectrum use to its highest valued use? In light of the fact that transfers and assignments involve transfer of *de jure* as well as *de facto* control, and on a permanent basis, should we impose any conditions on forbearance that would not apply in the leasing context?

57. If we were to pursue forbearance for transfer and assignment applications, should we employ the same notification requirements as proposed for spectrum leases in a forbearance regime as set forth in the *Report and Order*? Does this provide sufficient notice to interested parties, in light of the differences between spectrum leases and transfers of *de jure* and *de facto* control? Could this process be revised in any way to achieve a better balance among the competing public policy objectives implicated by any such plan for forbearance for transfers and assignments?

58. We request commenters to address whether the forbearance conditions noted above would satisfy the section 10 requirements for extending forbearance to some applications involving transfers of control and/or license assignments. Can parties provide any further explanation why forbearance from the 30-day public notice period and individualized prior Commission review and approval supports a finding that the section 10 test has been met? To the extent parties suggest alternative or additional conditions and benchmarks to be used to define transfers of control and assignment of licenses that might be processed on a forbearance basis, we request that they address in detail the section 10 implications of their proposals.

59. In assessing whether forbearance from prior public notice and individualized Commission review meet the section 10 test, we request commenters to consider the provisions of section 310(d), in particular the requirement that no transfer of control or assignment of license may take place unless the Commission finds that ''the public interest, convenience, and necessity will be served thereby.'' The statutory transfer of control obligations help to ensure that a licensee, initially found qualified to hold a Commission authorization, does not in turn replace itself with an unqualified entity or somehow use the transfer/assignment process to shirk its obligations to the Commission. We wish to ensure that any forbearance policies adopted in the context of transfer and assignment applications will not undercut our ability to carry out this obligation.

60. We acknowledge that in seeking comment on extending forbearance policies to some transfer and assignment applications, we are striving to balance competing goals. We anticipate that more successful functioning of secondary markets—both spectrum leases and outright transfers and assignments—will benefit consumers by increasing the range of wireless services available to them and driving spectrum to its highest valued use. But our public interest considerations are not limited solely to an assessment of competitive issues. We must also look to the Commission's other statutory objectives in weighing whether forbearance from traditional application processing for transfer and assignment applications in total furthers the public interest and whether it can be authorized in accordance with the provisions of section 10. We specifically request comment from interested parties regarding all the factors that should be taken into account in making our public interest calculus in this situation.

61. Finally, to the extent that we pursue forbearance from traditional regulatory processing for substantial transfer and assignment applications in the Wireless Radio Services encompassed within the *Report and Order* or in any additional services based on this *Further NPRM,* relief from prior public notice and Commission approval requirements would be available only for telecommunications services and telecommunications carriers. In a manner parallel to adopting forbearance-based notification processing for spectrum leases, we recognize the need to provide consistent treatment to similar types of wireless service licenses. In addition, in the case of transfers and assignments, there is a real likelihood in today's environment that a licensee would have licenses that would be eligible for forbearance and some that would not. We seek comment on how to ensure that we can expeditiously process a proposed transfer of control or assignment of license that involves both categories of licenses. Are there alternative ways we can streamline processing of transfer and assignment applications involving

non-telecommunications services and non-telecommunications carriers? We note that we seek comment only with respect to services covered by the *Report and Order* and services that might be added pursuant to this *Further NPRM.*

C. Extending the Policies Adopted in the Report and Order to Additional Spectrum-Based Services

62. In the *Report and Order,* we extend our new leasing policies to most Wireless Radio Services in which licensees hold exclusive rights to use the licensed spectrum. We wish to consider extending our leasing policies, as adopted in the *Report and Order* and as they may be modified based on this *Further NPRM,* to additional spectrum-based services. In light of our conclusions about the public interest benefits of spectrum leasing in the services for which we have adopted spectrum leasing policies, we consider in this *Further NPRM* whether we should extend the policies adopted in the *Report and Order* to some of the radio services that we have excluded to date.

63. *Public safety services.* Our Public Safety Radio Pool is regulated pursuant to part 90 of our rules. State and local jurisdictions rely upon our Public Safety Radio Pool to carry out their public safety obligations. The pool encompasses the licensing of the radio communications of state and local governmental entities and certain other categories of activities. Communications transmitted over these facilities may include communications among members of a firefighting team, directions to an ambulance crew, and coordination among different police and fire agencies responding to a regional crisis. In many instances, such public safety communications are highly time-critical, but episodic in nature.

64. We seek comment here on whether to permit licensees in the Public Safety Radio Pool to lease access rights to their licensed spectrum. Initially, we note that any such leasing would be a voluntary transaction by a public safety licensee, and not the use of this spectrum by third parties without consent by that licensee. We also recognize that public safety licensees require near-instant access to their full spectrum capacity, when demand surges due to emergencies. Using traditional technology, the only way to guarantee such access has been full-time dedicated spectrum. New technologies, however, may allow both ultra-reliable near-instant access by public safety licensees and use by other licensees at times of low public safety demand. We note that the Spectrum Policy Task Force recommended that the Commission consider permitting public safety licensees to lease their spectrum usage rights under conditions in which they could immediately reclaim and use their spectrum in such emergencies. Some have proposed to allow public safety licensees to lease their spectrum to others on an interruptible basis, whereby third parties could lease under the condition that they would immediately cease using the spectrum if the public safety licensees exercised their right to preempt such leased use. Under these circumstances, the public safety entity would lose no access to use of its spectrum, which it nevertheless could also make available at certain times to third parties. We intend to begin a proceeding later this year on cognitive radio technologies, including those that would enable interruptible spectrum leasing. That proceeding will consider the state of technology as well as changes to the Commission's technical rules, policies, procedures, or practices that could facilitate the economic development of such technologies.

65. In light of this, we request that commenters evaluate whether we should permit public safety licensees to lease their spectrum to third parties. Generally, we ask whether leasing in this spectrum will further the public interest, for instance, by resulting in more efficient use of the public safety spectrum, by providing another avenue for multiple public safety entities to use the same spectrum, and/or of providing financial resources to public safety licensees. Should we permit public safety licensees to lease to entities that are not eligible to obtain a public safety authorization, which would provide for a larger number of possible arrangements? If we permit leasing of public safety radio pool spectrum, should it be subject to any special rules in light of the importance of ensuring adequate access to spectrum for public safety purposes? Parties supporting leasing in the public safety frequencies should identify any elements of such arrangements that the Commission should consider in adopting policies.

66. We also seek comment on the significance, if any, of the 1997 Balanced Budget Act for spectrum leasing of 700 MHz public safety spectrum. In that Act, Congress directed the Commission to reallocate 24 MHz of the spectrum recovered from TV channels 60-69 for public safety services, and the Commission did so shortly thereafter. Congress specifically defined the ''public safety services'' that are intended to benefit from this spectrum allocation. Section 337(f) of the Communications Act defines the term ''public safety services'' as services: ''(A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided—(i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.''

67. We seek comment on whether this allocation of spectrum under section 337(a)(1) affects the ability of licensees in the Public Safety 700 MHz band to lease this spectrum for use that does not meet the definition of public safety services. We also seek comment on the significance for spectrum leasing, if any, of the statutory provision that permits nongovernmental organizations to be authorized as licensees of this spectrum by the relevant governmental entities. Because we recently adopted the same eligibility framework for the 50 MHz of spectrum at 4940-4990 MHz that is designated in support of public safety (the 4.9 GHz band), we pose the same questions relative to that band.

68. We also note that certain portions of the 700 MHz public safety spectrum are subject to special licensing regimes under our rules. For instance, 2.4 MHz of the Public Safety 700 MHz band is licensed to each state as a geographic area ''State License.'' The Commission adopted the State License structure after concluding that it would allow, but not require, each state to plan and develop shared, wide-area systems under a substantially streamlined licensing process. In this regard, the Commission revised the rules to allow state licensees to authorize appropriate public safety agencies, including federal entities, within a state and its political subdivisions to use the spectrum pursuant to the state licensee's authorization. We seek comment on the significance, if any, of this regime to our consideration of whether to permit licensees to lease this spectrum.

69. Similarly, we point out that a total of 12.5 MHz of the Public Safety 700 MHz band (the ''General Use'' channels), as well as 6 MHz of public safety spectrum at 821–824/866–869 MHz, is administered by regional or state-level planning committees. We seek comment on whether and/or how leasing would work for spectrum governed by these planning committees and processes.

70. Section 337(c) of the Communications Act provides that the Commission must waive any rules

(other than its regulations regarding harmful interference) necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings. First, the applicant must demonstrate that no other spectrum allocated for public safety use is immediately available. Second, the public safety entity must demonstrate that its use of the requested spectrum will not cause harmful interference to other spectrum users entitled to protection. Third, it must show that public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question. Fourth, the applicant must show that the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue. Finally, the applicant must demonstrate that grant of the application is consistent with the public interest. Waivers granted under section 337(c) thus are intended to meet a public safety entity's immediate need for spectrum. Can we extend the spectrum leasing policies adopted in the *Report and Order* to licenses granted under section 337(c)? Are there special considerations we should take into account in making this determination? Are there any additional limits that should be imposed on public safety licensees granted licenses under this section in entering into spectrum leasing arrangements?

71. Finally, some public safety spectrum is specifically designated for ''interoperability,'' ''mutual aid,'' or similar activities. Given the importance of this spectrum in the event of significant disaster or other activity requiring communication and coordination, are there any unique factors we should take into account in considering whether, and if so how, to permit licensees to voluntarily lease this spectrum?

72. *Various Private Wireless and Personal Radio Services.* The Private Wireless Services include spectrum licensed under parts 80 (Maritime Services), 87 (Aviation Services), and 97 (Amateur Radio Service). The Personal Radio Services include spectrum licensed under part 95 of our rules. We use a variety of methods to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. In assessing whether our spectrum leasing policies should be extended to any of these services, the nature of the authorization granted to users of the covered spectrum must be taken into account.

73. Some services encompassed within parts 80, 87, and 95 are licensed by rule. The rules governing these services indicate who may operate in the particular services and constitute the authorization to operate; no individual licenses are issued by the Commission. Specifically, users of the Wireless Medical Telemetry Service, Medical Implant Communications Service, Family Radio Service, Radio Control Radio Service, Citizens Band Service, Low Power Radio Service, and Multi-Use Radio Service do not receive an individualized license to cover operation. Given this licensing approach, we query whether it makes sense to extend our spectrum leasing policies to any services where licenses are issued by rule. We request any parties addressing this issue to discuss the legal and practical ramifications of their position, as well as whether spectrum leasing in such services would further the public interest.

74. In other private and personal wireless services, users have access to spectrum because they have passed a testing requirement. Upon successful completion of the required testing, users have the privilege of using the spectrum pursuant to an operator license. Moreover, these operators generally are not entitled to exclusive access to spectrum but instead must share access to the spectrum with all operators who have successfully completed the exam requirements.

75. Indeed, in some cases, the operations in these services are not governed by the issuance of a Commission license. We also note that in many of these services, stations do not have a fixed transmitting location. We point out that, for many of the services authorized and regulated under these parts, a user does not have authority to transfer or assign an authorization or license. Finally, spectrum throughout these rule parts is subject to shared, not exclusive, use.

76. These factors potentially present significantly different issues in considering whether spectrum leasing is meaningful and/or beneficial in these services than does spectrum leasing of exclusively licensed spectrum. For instance, if a licensee has no ability to transfer or assign a license, should that individual or entity have the ability to engage in spectrum leasing under the policies adopted in this rulemaking? Accordingly, we seek comment on the special considerations potentially applicable to the implementation of spectrum leasing to any of these services. We invite comments on the propriety of expanding the scope of our leasing policies to reach such services. Would such leasing promote more efficient spectrum use? Is spectrum leasing even a reasonable concept for some of these services? Would it further the public interest? Conversely, could it undermine the purposes of these services?

77. The *Report and Order* facilitates spectrum leasing by licensees on Industrial/Business Radio frequencies with exclusive authorizations, but requires that they lease only to entities that are also eligible for Industrial/Business Radio licensees. Should we revise our policies to permit leasing on these frequencies to commercial providers of wireless services? We seek comment on the significance, if any, to our determination on this issue of the Commission's decision in 2000 to permit such licensees to convert to commercial operation or to assign a private license to a commercial licensee in certain defined circumstances.

78. *Wireless services on shared frequencies.* In the *Report and Order*, we declined to allow leasing on shared frequencies, since parties can readily obtain their own authorizations on shared frequencies and they are not foreclosed from applying for an authorization by the existence of another licensee in the same geographic area. In light of our proposals in this *Further NPRM* to expand spectrum leasing and to take other steps to promote secondary markets, we wish to give further consideration to the possible value and implementation of spectrum leasing pursuant to authorizations involving shared frequencies. It might be possible, for example, for a group of licensees operating on the same frequency on a shared basis to cooperate in leasing spectrum to another entity. We recognize that leasing on shared frequencies may raise different implementation issues than leasing pursuant to an authorization involving the exclusive use of a block of frequencies in a particular geographic area. We welcome comments on the feasibility and possible public interest benefits of leasing involving shared frequencies. To the extent commenters take a position on this issue, we request that they address any implementation issues or other considerations that might be unique to this type of leasing. We also ask commenters whether permitting leasing on such spectrum would defeat the purpose of having shared spectrum available to a number of potential users as licensees or would in fact promote achievement of such goals.

79. *Non-multilateration LMS*. Non-multilateration LMS systems, regulated under part 90, transmit data to and from objects passing through particular locations (*e.g.*, automated tolls, monitoring of railway cars), and are licensed on a site-by-site basis, except that municipalities or other governmental operations may file for a non-multilateration license covering an Economic Area. Should the Commission extend its spectrum leasing rules to non-multilateration LMS? Given the nature of the operations and in light of the shared spectrum usage in this service, would spectrum leasing potentially be of benefit in this service?

80. *Instructional Television Fixed Service and Multipoint Distribution Service*. These services currently are regulated under parts 74 and 21, respectively. Our rules currently allow ITFS licensees to lease their excess channel capacity to others. Specifically, an ITFS licensee may lease up to 95 percent of its channel capacity for non-educational programming, consistent with policies unique to this leasing environment. We recently instituted a comprehensive review of the service rules relating to MDS and ITFS. Among other issues, we sought comment on whether there are any circumstances under which we should restrict or require leasing in order to ensure that access to spectrum is not unduly limited.

81. In this proceeding, we query whether we should extend the policies developed in this docket to leasing involving ITFS and MDS licensees, which have developed with their own approach to excess capacity leasing. Should we offer leasing based on the models used in this docket as an alternative format to the licensees in this service as well? Should the leasing policies adopted in this rulemaking replace the leasing standards that have been developed on a case-by-case basis for ITFS and MDS? How does action in this proceeding fit with the issues being considered in the open rulemaking proposing to evaluate the licensing structure for ITFS and MDS? We note that the record compiled in this proceeding on this issue may be taken into account in WT Docket No. 03–66 as we overhaul the rules and policies generally applicable to ITFS and MDS.

82. *Cable Television Relay Service*. This category includes cable television relay service under part 78. Although we explicitly excluded this service from consideration in the *NPRM*, we now request comment from interested parties as to whether we should permit spectrum leasing in this service. Parties addressing this issue should discuss any special considerations that should affect our decision whether to permit licensees voluntarily to lease this spectrum.

83. *Multichannel Video Distribution and Data Service*. Multichannel Video Distribution and Data Service (MVDDS) is regulated pursuant to subpart P of part 101. MVDDS licensees ''must use spectrum in the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service.'' This service was established subsequent to the Commission's adoption of the *NPRM* in this proceeding. Although the Commission established multiple geographic service areas, the rules specifically provide that each geographic area license will be auctioned to one licensee. We request interested parties to address whether the Commission's decision to authorize only one licensee per service area in this band should affect our determination whether to permit licensees voluntarily to lease this spectrum. What would be the benefits and/or harms of extending our spectrum leasing policies to this service?

84. *700 MHz Guard Band Managers.* The part 27 Guard Band Manager Service is not included within the scope of action take in the *Report and Order*. Should we take any action to revise the rules that govern the activities of 700 MHz guard band managers? Should such band managers be given the same opportunities as other licensees to engage in a greater range of spectrum leasing activities? Do the considerations related to interference and other operational factors affect the determination we might make with respect to leasing in the 700 MHz guard band manager frequencies?

85. *Satellite Services*. Although we decided in the *Report and Order* to make no changes in the spectrum leasing policies applicable to our satellite services at this time, we remain receptive to proposals for extending the policies we have developed in this proceeding to satellite services or considering alternative lease arrangements. Accordingly, we request parties to address whether we should take any further action in this proceeding to make spectrum leasing as defined in this proceeding available to satellite services as well in order to promote more efficient use of spectrum.

86. *Forbearance*. The forbearance provisions of section 10 apply only to telecommunication services and telecommunications carriers. Some of the licenses listed above involve spectrum operations that do not fall within the definition of telecommunications services. Do we have any other basis under the Act pursuant to which we could adopt any of the policies set forth in the *Report and Order* or proposed in this *Further NPRM*?

87. *Extending streamlined processing of transfer and assignment applications to additional services*. The *Report and Order* applies streamlined processing rules to transfer and assignment applications involving authorizations in the services for which we adopt spectrum leasing policies. Should we expand the scope of authorizations to which this streamlined processing applies? Can we encompass non-telecommunications services and non-telecommunications carriers within this streamlined process? Does it make sense to extend streamlined application processing to transfer and assignment applications involving other services? We request commenters to document the benefits and/or harms (depending upon the position they take) associated with expanding the availability of streamlined processing of transfer and assignment applications to additional services. We note that we seek comment only with respect to services covered by the *Report and Order* and services that might be added pursuant to this *Further NPRM*.

D. Application of the New De Facto Control Standard for Spectrum Leasing to Other Issues and Types of Arrangements

88. As noted in the *Report and Order*, we are at present limiting application of our newly adopted *de facto* control standard to the leasing context. Thus, the facilities-based *Intermountain Microwave* standard for evaluating *de facto* control continues to be the prevailing standard in other regulatory contexts that call for assessment of the exercise of *de facto* control over an applicant or licensee, such as in the case of designated entity and entrepreneur eligibility and management agreements.

89. We now examine whether we should apply our new *de facto* control standard to regulatory contexts other than leasing. We seek comment on whether our conclusion that the *Intermountain Microwave* standard no longer serves the public interest in the leasing context is also relevant to our application of the standard in other contexts. Alternatively, we seek comment on whether there are policy reasons to continue using a facilities-based approach to *de facto* control analysis in other regulatory contexts. Are there contexts in which evaluating

licensee control of facilities continues to be important to regulatory objectives that are distinguishable from our objectives in the leasing context? If we elect to continue using a facilities-based approach in some contexts but not others, how do we reconcile the existence of divergent *de facto* control standards under section 310(d) and other provisions of the Act?

90. *Designated entity and entrepreneur eligibility.* At present, our rules for determining affiliation under our designated entity and entrepreneur policies largely incorporate the *Intermountain Microwave* test. We request commenters to address whether the new standard for assessing *de facto* control adopted in the *Report and Order* should also be employed for assessing affiliation and eligibility for designated entity and entrepreneur status. Specifically, does section 309(j) implicate different concerns from section 309(d)? Do the statutory objectives of section 309(j) require more of a focus on actual facilities control by the beneficiary of our designated entity/entrepreneur policies, or is it sufficient that such an entity can obtain an authorization in an auction and then lease the spectrum pursuant to the Commission authorization without constructing and operating its own facilities? The underlying goals of section 309(j) necessarily will affect whether we conclude that the new *de facto* control standard is suitable in this context. Would the new *de facto* control standard ensure that the intended beneficiaries of section 309(j) in fact receive those benefits and that the designated entity/entrepreneur rules (to the extent they are retained) can not be unfairly manipulated?

91. *Management agreements.* The Commission has long permitted the use of management agreements and other agency arrangements by its licensees as a means to manage their authorized services and facilities. The issue of whether a licensee has retained *de facto* control vis-á-vis a manager in turn has long been premised on the *Intermountain Microwave* decision and our related *Motorola* decision. This assessment of management agreements is inherently a case-by-case determination as well as strongly tied to the control of facilities and operations implemented pursuant to a Commission authorization. Should we adopt the new *de facto* control standard for management agreements as well? Is there anything in the new standard that would forbid elements of management agreements previously entered into in reliance on the *Intermountain Microwave* and *Motorola* standards? Could extending a revised *de facto* control standard to management agreements allow parties to enter into a purported management agreement—which would not be subject to the notification and other obligations applicable to spectrum leasing—when in fact the arrangement should be considered under spectrum leasing policies? Would this allow parties to undercut our efforts to obtain adequate information for enforcement purposes as well as facilitating the efficient functioning of secondary markets?

92. Finally, are there any other contexts in which we currently use the *Intermountain Microwave* standard but should now consider adoption of our new *de facto* control standard? We request commenters identifying any such situations to discuss the appropriateness of the new standard in terms of overall policy objectives as well as practical deployment considerations.

E. Effect of Secondary Markets on Designated Entity/Entrepreneur Policies

93. The Commission's designated entity and entrepreneur policies were adopted to further statutory requirements and to promote participation in the provision of spectrum-based services by certain designated entities. These policies were created in 1994 as one component of the Commission's implementation of the competitive bidding policies and procedures mandated by sections 309(j)(3) and 309(j)(4) of the Act. Historically, the Commission's designated entity policies have sought to ensure that small businesses were given the opportunity to participate in the provision of spectrum-based services.

94. The Commission currently applies a control test to ensure that its designated entity and entrepreneur policies serve the programs' intended beneficiaries. Section 1.2110(c)(2) sets forth the controlling interest standard and is generally used for determining which entities are eligible for small business or entrepreneur status. The premise of this rule is that all parties that control an applicant or have the power to control an applicant, and such parties' affiliates, will have their gross revenues counted and attributed to the applicant in determining the applicant's eligibility for small business status or for any other size-based status using a gross revenue threshold.

95. From the outset, the Commission has also been determined to ensure, pursuant to section 309(j)(4)(E), that the designated entity and entrepreneur policies would not be abused. As the Commission has explained, these policies are designed, among other reasons, to ''deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use our preferences to obtain a license at a lower cost than they otherwise would have to pay and later sell it at the market price.'' The Commission has also indicated that the unjust enrichment rules were designed to recapture for the government a portion of the value of the bidding credit or other special provision if a designated entity prematurely transfers its licenses to an ineligible entity. The Commission's unjust enrichment provisions have been codified in section 1.2111 of the Commission's rules.

96. We inquire whether we should alter the policies adopted in the *Report and Order* for designated entity leasing under the *de facto* transfer leasing option or under the proposals contained in this *Further NPRM.* Should we permit a designated entity or entrepreneur licensee to lease some or all of its spectrum usage rights to any entity, regardless of whether that entity would qualify for the same small business designated entity status as that of the licensee? What would be the public interest benefits of revising the policies and rules in this manner? Would such a revision be consistent with our unjust enrichment policies and rules? What alternative approaches might the Commission take were it to decide to provide additional flexibility to designated entity licensees? How would we best design policies so as to ensure compliance with our statutory obligations to prevent unjust enrichment?

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis Regarding the Further NPRM

97. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further NPRM.* Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further NPRM*, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission will send a copy of the *Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small

Business Administration (SBA) in accordance with the Regulatory Flexibility Act. *See* 5 U.S.C. 603(a).

1. Need for, and Objectives of, the Proposed Rules

98. While the changes we adopt today in the *Report and Order* are an important step towards facilitating leasing of spectrum usage rights and enhancing the functioning of the secondary spectrum marketplace generally, we believe that there are additional measures that we might take to improve efficiency and promote access to a secondary spectrum market in order to ensure the greatest benefit to spectrum users and consumers. Thus, in the *Further NPRM,* we seek comment on: (1) How to encourage the development of information and clearinghouse mechanisms to facilitate secondary market transactions between licensees and new users in need of access to spectrum; (2) further streamlining of application processing for spectrum leasing, transfers of control, and license assignments; (3) expanding our spectrum leasing policies to additional services not encompassed within the *Report and Order;* (4) applying the new *de facto* control standard adopted for spectrum leasing to other issues and types of arrangements; and, (5) evaluating whether the spectrum leasing policies adopted in the *Report and Order* for designated entities should be altered in any respect. We discuss the potential impact of these on small entities in the paragraphs that follow.

2. Legal Basis

99. The potential actions on which comment is sought in this *Further NPRM* would be authorized under sections 1, 4(i), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

100. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that ''the rule will not, if promulgated, have a significant impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' This IRFA describes and estimates the number of small entity licensees that may be affected if the proposals in this *Further NPRM* are adopted.

101. This *Further NPRM* could result in rule changes that, if adopted, would create new opportunities and obligations for Wireless Radio Services licensees and other entities that may lease spectrum usage rights from these licensees. When identifying small entities that could be affected by our new rules, we provide information describing auctions results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from this *Further NPRM.*

a. Wireless Radio Services

102. Many of the potential rules on which comment is sought in this *Further NPRM,* if adopted, would affect small entity licensees of the Wireless Radio Services identified herein:

103. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

104. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 977 such firms that operated for the entire year in 1997, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

105. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In an order relating to this service, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very

small business won any of these licenses.

106. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

107. *Upper 700 MHz Band Licenses.* The Commission released an order authorizing service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

108. *Paging.* In a recent order relating to paging, we adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service Report*, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

109. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

110. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in an order relating to narrowband PCS. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

111. *Specialized Mobile Radio (SMR).* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held

on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

112. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

113. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

114. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

115. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

116. Fixed Microwave Services. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to ''Cellular and Other Wireless Telecommunications'' companies—that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

117. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997, and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003, and closed the same day. One license was awarded. The winning bidder was not a small entity.

118. *39 GHz Service.* The Commission defines ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these definitions. The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

119. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

120. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small

business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In an order relating to the 218–219 MHz Service, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

121. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

122. *Rural Radiotelephone Service.* We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

123. *Air-Ground Radiotelephone Service.* We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

124. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.,* an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

125. *Multiple Address Systems.* MAS entities, in general, fall into two categories: (1) Those using MAS spectrum for profit-based uses, and (2) those using MAS spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years. ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the ''Cellular and Other Wireless Telecommunications'' definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

127. *Incumbent 24 GHz Licensees.* The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any entity employing no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

128. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved

these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

129. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

130. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA's or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in the *Further NPRM.*

131. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the *Further NPRM.*

132. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

133. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the *Further NPRM.*

134. *Cable System Operators (Rate Regulation Standard).* The Commission has developed, with SBA approval, its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a ''small system,'' for purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers, and thus is unable to estimate, at this time, the number of small cable systems nationwide.

135. *Cable System Operators (Telecom Act Standard).* The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

136. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004. Accordingly, there are no licensees in this service.

b. Private Wireless Radio Services

137. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

138. *Aviation and Marine Services.* Small businesses in the aviation and

marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

139. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

140. Despite the paucity, or in some instances, total absence, of information about their status as licensees or regulatees or the number of operators in each such service, users of spectrum in these services are listed here as a matter of Commission discretion in order to fulfill the mandate imposed on the Commission by the Regulatory Flexibility Act to regulate small business entities with an understanding towards preventing the possible differential and adverse impact of the Commission's rules on smaller entities. Further, the listing of such entities, despite their indeterminate status, should provide them with fair and adequate notice of the possible impact of the proposals contained in the *Further NPRM.*

141. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees in these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

c. Satellite-Related Services

142. *Fixed Satellite Transmit/Receive Earth Stations.* The most recent Commission data shows that there are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of earth station licensees that are small business entities under SBA definitions.

143. *Fixed Satellite Small Transmit/Receive Earth Stations.* The most recent Commission data shows that there are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of fixed satellite small transmit/receive earth station licensees that are small business entities under SBA definitions.

144. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems (14 GHz).* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The most recent Commission data shows that there are 485 current VSAT System authorizations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of VSAT system licensees that are small business entities under SBA definitions.

145. *Mobile Satellite Earth Stations.* The most recent Commission data shows that there are 21 licensees. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of mobile satellite earth station licensees that are small business entities under SBA definitions.

146. *Radio Determination Satellite Earth Stations.* The most recent Commission data shows that there are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth station licensees that are small business entities under SBA definitions.

147. *Space Stations (Geostationary).* The most recent Commission data shows that there currently are an estimated 75 Geostationary Space Station authorizations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of geostationary space station licensees that are small business entities under SBA definitions.

148. *Space Stations (Non-Geostationary).* The most recent Commission data shows that there currently are seven Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of non-geostationary space station

licensees that are small business entities under SBA definitions.

149. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Program Distribution.'' This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business entity under SBA definitions.

150. *Digital Audio Radio Services (DARS).* Commission records show that there are two Digital Audio Radio Services authorizations. We do not request nor collect annual revenue information from these licensees, and are unable to estimate the number of DARS licensees that are small business entities under SBA definitions.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

151. The policies and proposals in the *Further NPRM* could apply to a significant number of Commission licensees and spectrum lessees in a range of wireless services. The *Further NPRM* explores possible steps to allow certain spectrum leasing arrangements, and possibly license assignments and transfers of control, to be implemented without prior individualized Commission approval, using forms similar to those used at present for obtaining prior Commission approval of these types of transactions. At most, the *Further NPRM* proposals would shift the timing of filing of forms for certain of the transactions. In addition, the *Further NPRM* inquires about extending to additional services the spectrum leasing procedures adopted in the *Report and Order* for spectrum manager leasing arrangements and *de facto* transfer leasing arrangements. Licensees otherwise would have to obtain prior Commission consent to transfers of control or license assignments on similar forms.

152. Consideration of extending the spectrum leasing policies adopted in the *Report and Order* to additional services specified in the *Further NPRM* implicates potential reporting, recordkeeping and compliance requirements for licensees and spectrum lessees in these additional services, including: (1) Retention of lease agreements; (2) reporting of spectrum leasing terms to the Commission; (3) licensee and lessee compliance with the Commission's technical and service rules; (4) licensee filings with the Commission on behalf of the lessee; (5) licensee verification of lessee compliance with Commission rules; (6) licensee supervision of a lessee's adherence to the Commission's rules and policies; and (7) the leasing of spectrum by entities designated as ''small business'' or ''very small business'' under the Commission's rules. Licensees and lessees may retain or hire outside professionals (*e.g.,* legal and engineering staff) to draft lease agreements, provide consulting services, maintain records, and comply with applicable Commission rules. They also may employ existing or new employees to be responsible for reporting, recordkeeping, and other compliance requirements.

153. The *Further NPRM* also explores what steps the Commission should take, possibly including additional information submissions, to promote effective functioning of secondary markets in spectrum usage rights. The *Further NPRM* does not, however, propose any specific reporting, recordkeeping or compliance requirements in this regard. We seek comment on what, if any, requirements we should impose if we adopt the proposals set forth in the *Further NPRM*.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

154. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

155. Regarding our inquiry in the *Further NPRM* about how to facilitate increased access to spectrum usage information, we do not anticipate any adverse impact on small entities. In fact, small (and large) entities should benefit by obtaining access to information that would enable their acquisition of spectrum that suits particular business needs. In addition, we note that we are encouraging parties to comment on whether we should develop an on-line information database, require more detailed operational information from licensees/lessees, create additional information services, encourage private sector collection and distribution of information, or allow independent third parties to act as ''market makers.'' Although certain information collection requirements might impact entities, including small entities, due to increased reporting requirements, the *Further NPRM* and this IRFA provide interested parties with an opportunity to comment on the possible burdens associated with each of the possible steps.

156. We also seek comment in the *Further NPRM* as to whether there are any additional steps that could be taken to further an efficient secondary marketplace through technological advances, opportunistic spectrum users, or other mechanisms (*e.g.,* spectrum managers). We do not anticipate that any rules we decide to adopt in this area would adversely impact small entities. We believe that small (and large) entities will benefit from removing any unnecessary regulatory barriers to efficient spectrum usage.

157. Regarding our proposal in the *Further NPRM* to forbear from individual prior review and approval by the Commission for certain categories of leasing arrangements involving a transfer of *de facto* control, we do not anticipate any adverse impact on small entities. In this connection, while we believe that lessening regulatory requirements would facilitate leasing arrangements entered into by all entities, including both small and large entities, we are mindful that forbearance must also be in the public interest. Consequently, we seek comment on various aspects of this proposal and specifically request commenters, including small entities, to comment on the eligibility criteria for forbearance set forth in the *Further NPRM*. We realize that although some of the specific criteria could impact small entities, overall small entities should benefit from a more streamlined approach. Moreover, these specific criteria affect all entities, whether large or small entities. For example, lessees will need to comply with our foreign ownership restrictions before forbearance would apply. This requirement would be equitably applied to all entities seeking to obtain spectrum through a spectrum leasing arrangement. Moreover, even where possible spectrum lessees may not take advantage of entering into spectrum leasing arrangements without individualized prior Commission approval, such entities (again, whether large or small entities) would be able to

seek approval by means of our prior approval procedures for spectrum leasing arrangements.

158. Similarly, regarding our possible forbearance from individual prior review and approval by the Commission for transfer and assignment transactions, as proposed in the *Further NPRM*, it seems unlikely that small entities would suffer any adverse impact. Nonetheless, we seek comment on the various eligibility criteria that might be employed and, in particular, we encourage small entities to comment on the impact that our unjust enrichment and installment payment policies might have on this proposal.

159. Regarding the possible extension of the spectrum leasing policies adopted in the *Report and Order* to a number of excluded wireless services, as proposed in the *Further NPRM*, we anticipate generally that there would be no adverse impact on small entities. Because there are substantial numbers of small entities in all the wireless services, small entities could be significantly affected by our extension of leasing policies to the wireless services excluded by the *Report and Order.* We believe, however, that these small entities would likely benefit from the increased flexibility that leasing arrangements will offer in meeting their particular spectrum needs.

160. Regarding the possibility of extending our decision to streamline the application processing for transfer and assignment applications to other wireless services, as proposed in the *Further NPRM*, we anticipate no adverse impact to small entities. The information that would be collected under a more streamlined approach is similar to what is currently required under our transfer and assignment rules and should facilitate spectrum leasing by reducing transaction costs, uncertainty, and delay. While an alternative would be to require no approval, we believe that this would run counter to our statutory responsibilities under section 310(d) of the Communications Act.

161. Regarding our analysis in the *Further NPRM* of the question of whether to apply our new *de facto* control standard to regulatory contexts other than leasing, we cannot determine at this time what the impact on small entities might be. Should we move away from the facilities-based approach of our *Intermountain Microwave* standard, it may be presumed that small entities would have more flexibility to enter into certain types of management agreements. On the other hand, such an approach might not be warranted in connection with our designated entity and entrepreneur eligibility rules and policies. We thus encourage small entities to comment on the various issues raised in the *Further NPRM* regarding an appropriate standard for defining *de facto* control.

162. Finally, regarding our inquiry in the *Further NPRM* into whether the restrictions adopted for designated entity leasing should be altered, we believe that small entities would likely benefit from the removal of certain restrictions. But as noted above, there is a balance of competing considerations taking place here. We hope that small entities in particular will comment on what approach best promotes an efficient secondary spectrum market, provides benefits to small entities, and considers our statutory and public interest obligations.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

163. None.

B. Initial Paperwork Reduction Act of 1995 Analysis Regarding the Further NPRM

164. In the *Further NPRM*, this document seeks comment on a proposed information collection As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this document and must have a separate heading designating them as responses to the Initial Paperwork Reduction Analysis (IPRA). OMB comments are due January 26, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Comment Dates Regarding the Further NPRM

165. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the *Further NPRM* on or before December 5, 2003 and reply comments on or before January 5, 2004. Comments and reply comments should be filed in WT Docket No. 00-230. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

166. Comments may be filed either by filing electronically, such as by using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies. Parties are strongly urged file their comments using ECFS (given recent changes in the Commission's mail delivery system). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, the electronic filer should include its full name, Postal Service mailing address, and the applicable docket or rulemaking number, WT Docket No. 00-230. Parties also may submit comments electronically by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form (your e-mail address).'' A sample form and directions will be sent in reply.

167. Parties who choose to file by paper may submit such filings by hand or messenger delivery, by U.S. Postal Service mail (First Class, Priority, or Express Mail), or by commercial overnight courier. Parties must file an original and four copies of each filing in WT Docket No. 00–230. Parties that want each Commissioner to receive a personal copy of their comments must file an original plus nine copies. If paper filings are hand-delivered or messenger-delivered for the Commission's Secretary, they must be delivered to the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. To receive an official ''Office of the Secretary'' date stamp, documents must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. (The filing hours at this facility are 8 a.m. to 7 p.m.) If paper filings are submitted by mail though the U.S. Postal Service (First Class mail, Priority Mail, and Express Mail), they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. If paper filings are submitted by commercial overnight courier (*i.e.,* by overnight delivery other

than through the U.S. Postal Service), such as by Federal Express or United Parcel Service, they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. (The filing hours at this facility are 8 a.m. to 5:30 p.m.)

168. Parties may also file with the Commission some form of electronic media submission (*e.g.,* diskettes, CDs, tapes, etc.) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743.

169. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, facsimile (202) 863–2898, or e-mail at *qualexint@aol.com;* and (2) Paul Murray, Commercial Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or e-mail at *Paul.Murray@fcc.gov.*

170. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, *www.fcc.gov/dtf,* and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.* This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, *Brian.Millin@fcc.gov,* or send an e-mail to *access@fcc.gov.*

D. Ex Parte Rules Regarding the Further NPRM—Permit-But-Disclose Proceeding

171. With regard to the *Further NPRM,* this is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

V. Ordering Clauses

172. Pursuant to the authority contained in sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r), the *Further NPRM* is adopted.

173. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the Report and Order and the Further NPRM of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–29193 Filed 11–24–03; 8:45 am]

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