

§ 1.9040

47 CFR Ch. I (10–1–07 Edition)

leasing arrangement that exceeds a total of one year.

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

(i) *Conversion of a short-term spectrum leasing arrangement into a long-term de facto transfer leasing arrangement.* (1) In the event the licensee and spectrum lessee involved in a short-term *de facto* transfer leasing arrangement seek to extend the spectrum leasing arrangement beyond the one-year limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in paragraphs (i)(2) and (i)(3) of this section.

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

(3) The licensee and spectrum lessee are not permitted to convert a short-term *de facto* transfer leasing arrangement into a long-term *de facto* transfer leasing arrangement if the parties would have been restricted, in the first instance, from entering into a long-term *de facto* transfer leasing arrange-

ment because of a transfer, use, or other restriction applicable to the particular service (*see* § 1.9030).

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

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

(l) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority.* The rule applicable to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(i)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

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

(n) *Renewal.* The rule applicable with regard to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(1)) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the renewal of the short-term *de facto* transfer leasing arrangement to extend into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed one year. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* § 1.949).

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77557, Dec. 27, 2004]

EFFECTIVE DATE NOTE: At 69 FR 77557, Dec. 27, 2004, § 1.9035(e) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.9040 Contractual requirements applicable to spectrum leasing arrangements.

(a) Agreements between licensees and spectrum lessees concerning spectrum

Federal Communications Commission

§ 1.9048

leasing arrangements entered into pursuant to the rules of this subpart must contain the following provisions:

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

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

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

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

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

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

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

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

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

(a) If a licensee that holds a license subject to the Commission's installment payment program (*see* §1.2110 of

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

(b) If a licensee holds a license subject to the installment payment program rules (*see* §1.2110 and related service-specific rules), the licensee and any spectrum lessee must execute the Commission-approved financing documents. No licensee or potential spectrum lessee may file a spectrum leasing notification or application without having first executed such Commission-approved financing documentation. In addition, they must certify in the spectrum leasing notification or application that they have both executed such documentation.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77558, Dec. 27, 2004]

§ 1.9047 Special provisions relating to leases of educational broadband service spectrum.

Licensees in the Educational Broadcasting Service may enter into spectrum leasing arrangements with spectrum lessees only insofar as such arrangements comply with the applicable requirements for spectrum leasing arrangements involving spectrum in that service as set forth in §27.1214 of this chapter

[69 FR 72027, Dec. 10, 2004]

§ 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.

Licensees in the Public Safety Radio Services (*see* part 90, subpart B and §90.311(a)(1)(i) of this chapter) may enter into spectrum leasing arrangements with other public safety entities eligible for such a license authorization as well as with entities providing