

§ 1.9010

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

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

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

(p) [Reserved]

(q) The Advanced Wireless Services (part 27 of this chapter);

(r) The VHF Public Coast Station Service (part 80 of this chapter);

(s) The Automated Maritime Telecommunications Systems service (part 80 of this chapter);

(t) The Public Safety Radio Services (part 90 of this chapter);

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

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

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

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

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

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

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

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

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

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

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

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

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

(hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter); and,

(ii) The 700 MHz Guard Bands Service (part 27 of this chapter).

[69 FR 77551, Dec. 27, 2004, as amended at 71 FR 29815, May 24, 2006; 72 FR 27708, May 16, 2007; 72 FR 48843, Aug. 24, 2007]

GENERAL POLICIES AND PROCEDURES

§ 1.9010 *De facto* control standard for spectrum leasing arrangements.

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

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

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

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

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

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

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

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

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

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

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

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77551, Dec. 27, 2004]

§ 1.9020 Spectrum manager leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains *de jure* control of the license and *de facto* control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section. The term of a spectrum manager leasing arrangement may be no longer than the term of the license authorization.

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