

Federal Communications Commission

§ 1.9045

§ 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(l)) 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 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]

§ 1.9046 Special provisions related to spectrum manager leasing in the Citizens Broadband Radio Service.

(a) *Scope.* Subject to § 96.32 of this chapter, a Priority Access Licensee, as defined in § 96.3 of this chapter, is permitted to engage in spectrum manager leasing for any portion of its spectrum or geographic area, outside of the PAL Protection Area, for any bandwidth or duration period of time within the terms of the license with any entity that has provided a certification to the Commission in accordance with this section or pursuant to the general notification procedures of § 1.9020(e).

(b) *Certification.* The lessee seeking to engage in spectrum manager leasing pursuant to this section must certify with the Commission that it meets the same eligibility and qualification requirements applicable to the licensee before entering into a spectrum manager leasing arrangement with a Priority Access Licensee, as defined in § 96.3 of this chapter and maintain the accuracy of such certifications.

(1) Priority Access Licensees, as defined in § 96.3 of this chapter, are deemed to meet the certification requirements.

(2) Entities may also certify by using the Universal Licensing System and FCC Form 608.

(c) *Notifications regarding spectrum manager leasing arrangements.* Prior to lessee operation, the licensee seeking

to engage in spectrum manager leasing pursuant to § 1.9020(e) must submit notification of the leasing arrangement to the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, by electronic filing. The notification shall include the following information:

(1) Lessee contact information including name, address, telephone number, fax number, email address;

(2) Lessee FCC Registration Number (FRN);

(3) Name of Real Party in Interest and related FCC Registration Number (FRN);

(4) The specific spectrum leased (in terms of amount of bandwidth and geographic area involved) including the call sign(s) affected by the lease; and

(5) The duration of the lease.

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

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

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification for an additional period not to exceed the term of the Priority Access License, as defined in § 96.3 of this chapter, provided that the licensee notifies the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, of the extension in advance of operation under the extended term and does so pursuant to the notification procedures in this section.

(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 Spectrum Access System Administrator, 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 Spectrum Access System Administrator as promptly as practicable.