§ 1.9035 Short-term de facto transfer 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 short-term de facto transfer leasing arrangement in which the licensee retains de jure control of the lease and de facto control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A “short-term” de facto transfer leasing arrangement has an individual or combined term of not longer than one year. The term of a short-term de facto transfer leasing arrangement may be no longer than the term of the licensee authorization.

(b) Rights and responsibilities of licensee. The rights and responsibilities applicable to a licensee that enters into a short-term de facto transfer leasing arrangement are the same as those applicable to a licensee that enters into a long-term de facto transfer leasing arrangement, as set forth in §1.9030(b).

(c) Rights and responsibilities of spectrum lessee. The rights and responsibilities applicable to a spectrum lessee that enters into a short-term de facto transfer leasing arrangement are the same as those applicable to a spectrum lessee that enters into a long-term de facto transfer leasing arrangement, as set forth in §1.9030(c).

(d) Applicability of particular service rules and policies. Under a short-term de facto transfer leasing arrangement, the service rules and policies apply to the licensee and spectrum lessee in the same manner as under long-term de facto transfer leasing arrangements (see §1.9030(d)), except as provided herein:

(1) Use restrictions and regulatory classification. Use restrictions applicable to the licensee also apply to the spectrum lessee except that §20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis, and except that a licensee with an authorization that restricts use of spectrum to non-commercial uses may enter into a short-term de facto transfer leasing arrangement that allows the spectrum lessee to use the spectrum commercially.

(2) Designated entity/entrepreneur rules. Unjust enrichment provisions (see §1.2111) and transfer restrictions (see §24.839 of this chapter) do not apply with regard to a short-term de facto transfer leasing arrangement.

(3) Construction/performance requirements. The licensee is not permitted to attribute to itself the activities of its spectrum lessee when seeking to establish that performance or build-out requirements applicable to the licensee have been met.

(4) E911 requirements. If E911 obligations apply to the licensee (see §20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum.

(e) Spectrum leasing application. Short-term de facto transfer leasing arrangements will be processed pursuant to immediate approval procedures, as discussed herein. Parties entering into a short-term de facto transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 608, and obtain Commission consent prior to consummating the transfer of de facto control of the leased spectrum, except that parties falling within the provisions of §1.913(d) may file the application either electronically or manually.

(1) To be accepted for filing under these immediate approval procedures, the application must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those relating to the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is required. In addition, the application must include payment of the required
application fee; for purposes of determining the applicable application fee, the application will be treated as a transfer of control (see §1.1102). Finally, the spectrum leasing arrangement must not require a waiver of, or declaratory ruling, pertaining to any applicable Commission rules.

(2) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the short-term de facto transfer spectrum leasing arrangement will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data from the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application, as reflected in ULS.

(3) Grant of consent to the application under these procedures will be reflected in a public notice (see §1.933(a)) promptly issued after grant, and is subject to reconsideration (see §§1.106(f), 1.108, 1.113).

(i) Effective date of spectrum leasing arrangement. The spectrum leasing arrangement will be deemed effective in the Commission’s records, and for purposes of the application of the rules set forth in this section, on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(g) Restrictions on the use of short-term de facto transfer leasing arrangements. (1) The licensee and spectrum lessee are not permitted to use the special rules and expedited procedures applicable to short-term de facto transfer leasing arrangements for arrangements that in fact will exceed one year, or that the parties reasonably expect to exceed one year.

(2) The licensee and spectrum lessee must submit, in sufficient time prior to the expiration of the short-term de facto transfer spectrum leasing arrangement, the appropriate application under the rules and procedures applicable to long-term de facto leasing arrangements, and obtain Commission consent pursuant to those procedures.

(h) Expiration, extension, or termination of the spectrum leasing arrangement. (1) Except as provided in paragraph (h)(2) or (h)(3) of this section, a short-term de facto transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) Upon proper application (see paragraph (e) of this section), a short-term de facto transfer leasing arrangement may be extended beyond the initial term set forth in the application provided that the initial term and extension(s) together would not result in a 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 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
§ 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.

(b) Subject to the provisions of this section, agreements may contain other provisions, including provisions that are required by the parties to the agreement in order to implement the spectrum leasing arrangement in a manner and to the extent that is intended by the parties in their respective interests. The Commission must be notified of any such provisions at the same time that the licensee submits its application for license renewal.