

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Promoting Efficient Use of Spectrum )  
Through Elimination of Barriers to the ) WT Docket No. 00-230  
Development of Secondary Markets )

**COMMENTS OF UTSTARCOM, INC.**

UTStarcom, Inc. (“UTStarcom”) hereby submits its comments in response to the above-referenced proceeding.<sup>1</sup> UTStarcom supports the Commission in its efforts to remove unnecessary regulatory barriers to the development of a secondary market in radio spectrum usage rights. Accordingly, UTStarcom urges the Commission to: (1) allow a licensee to delegate responsibilities for compliance with the Commission’s rules to the lessee, with Commission enforcement directed at the lessee rather than the licensee; and (2) actively encourage the leasing of unoccupied spectrum, in appropriate cases, when a licensee demonstrates no interest in doing so.

**I. BACKGROUND**

UTStarcom is a U.S. company that provides equipment to support community wireless network service. UTStarcom has considerable experience with the implementation of such service in Asia and is in the process of introducing the service to the United States market.<sup>2</sup> Community wireless network service will facilitate rapid

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<sup>1</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Dkt. No. 00-230, (rel. Nov. 27, 2000) (“NPRM”).

<sup>2</sup> UTStarcom and Drew University have a pending waiver request that seeks waiver of the Commission’s rules to permit low-power isochronous operation in the 1910-1920 MHz UPCS asynchronous band in order to serve the community telephone system needs of Drew University at its campus in Morris County, New Jersey, Public Notice, DA 00-2061 (rel. Sept. 8, 2000). UTStarcom also has filed a petition for rulemaking, (RM-10024), seeking rule changes that will permit a new category of low-cost community wireless telecommunications networks to serve the needs of rural residents and other underserved populations wherever located.

and cost effective provision of small-scale wireless networks that can serve a single small town with a population of just a few thousand or a single neighborhood in the middle of a large urban environment. A thriving secondary market, in which potential operators could obtain small amounts of spectrum for use in limited geographic areas, is well suited to such community wireless network operations.

Currently, where small-scale wireless networks are desired, the existing MTA/BTA licensing structure makes it difficult for potential operators to obtain spectrum. Areas such as small towns outside the population centers of the BTAs and low-income, highly populated areas in the center of cities are often unserved or underserved due to the undesirable economics of such geographic areas to the large carriers who hold the licenses.

In most cases, the large carriers can easily fulfill their BTA coverage obligations by simply providing service to the rather small areas where population is heavily concentrated. For example, a carrier serving the Juneau, Alaska BTA can meet all its PCS service build-out obligations by serving only Juneau, leaving the remainder of the territory with no service. Promoting spectrum leasing in the smaller communities and in areas where there is currently very limited or no wireless service would allow small businesses or non-profit entities to provide wireless local service at very attractive rates.

Unfortunately, the Commission's secondary market proposal does not go far enough to promote service to rural areas and small communities. While the spectrum can be put to very effective use for such applications, the applications are not likely to be lucrative for the large carriers. Although a lessee might profitably provide service, it could not do so if it had to pay high spectrum lease rates, but the rates that would be affordable would not attract the interest of the large licensees, which would result in large numbers of small communities being unserved or underserved.

Accordingly, the Commission should do more to encourage the development of secondary markets in rural areas and small communities.

**II. THE REQUIREMENT THAT A LICENSEE MUST BE RESPONSIBLE FOR COMPLIANCE WITH THE COMMISSION'S RULES SHOULD BE APPLIED FLEXIBLY.**

The Commission proposes to hold a licensee responsible for a lessee's non-compliance with the Commission's rules.<sup>3</sup> While this basic rule is, of course, sound, many licensees will not want to lease to small-scale, relatively low dollar value operators if the obligation to police the lessee is too burdensome. In these circumstances, leasing spectrum would be more trouble than it is worth; it would be easier to let the spectrum lie fallow in the more remote regions of a BTA.

The Commission, therefore, should strive to reduce the regulatory burden on the licensee. For example, the licensee could be permitted to delegate the responsibility to comply with Commission operating requirements to the lessee through lease provisions. The Commission could then be notified of the existence of the lease and the contact information for the lessee. Thereafter, in the first instance, the Commission could proceed directly against the lessee if there are violations of the rules.

**III. THE COMMISSION SHOULD ENCOURAGE LEASING OF SPECTRUM TO SERVE RURAL AREAS AND SMALL COMMUNITIES.**

The Commission's proposal provides no mechanism for a potential lessee to obtain permission to use unoccupied spectrum when a licensee is not interested in leasing. Of course, there may be many reasons why the licensee is not interested in leasing. For example, the Commission would not want to second guess the licensee's reservations about dealing with a potential lessee who may not be financially qualified.

There is little reason, however, why the Commission could not actively encourage leasing spectrum to serve rural areas or remote or underserved communities. In such circumstances, and upon an appropriate showing by a potential lessee, the Commission could provide incentives for the licensee to engage in lease arrangements to serve such areas or communities within the licensee's larger service area. Without

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<sup>3</sup> *NPRM* at ¶ 29.

such involvement and encouragement by the Commission, small communities may have little or no wireless service for the indefinite future.

**CONCLUSION**

The Commission should take actions to promote secondary markets with the modifications suggested herein.

Respectfully submitted,

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