

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

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

COMMENTS OF AT&T WIRELESS SERVICES, INC.

Howard J. Symons
Sara F. Leibman
Tara M. Corvo
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

Douglas I. Brandon
Vice President - External Affairs
David C. Jatlow
Vice President - Federal Regulatory Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

February 9, 2001

TABLE OF CONTENTS

	Page
INTRODUCTION AND SUMMARY	1
I. FACILITATING SPECTRUM LEASING WOULD RESULT IN SIGNIFICANT BENEFIT TO THE PUBLIC	2
II. THE COMMISSION’S SPECTRUM LEASING POLICY SHOULD NOT TREAT LESSEES AS LICENSEES.....	4
A. The Commission’s Qualification, Eligibility And Attribution Rules For Licensees Should Not Apply To Lessees.	5
1. There is no reason to apply the CMRS spectrum cap to leased spectrum.	5
2. The Commission should not impose restrictions on the leasing ability of “entrepreneurs”.....	8
B. The Licensee Should Remain Ultimately Responsible For Compliance With The Commission’s Rules.	9
C. A “Band Manager” Licensing Model Would Decrease The Benefits Of Spectrum Leasing.....	11
III. THE <u>INTERMOUNTAIN MICROWAVE</u> CRITERIA ARE NOT RELEVANT IN THE SPECTRUM LEASING CONTEXT	12
CONCLUSION.....	14

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

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

COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Commission’s Notice of Proposed Rulemaking, AT&T Wireless Services, Inc. (“AT&T”) hereby submits its comments in the above-captioned proceeding.^{1/}

INTRODUCTION AND SUMMARY

The Commission’s proposal to facilitate and encourage spectrum leasing is an important step towards alleviating the current lack of available spectrum. With increasing needs for spectrum to provide traditional mobile telephone service, wireless data service, and new “Third Generation” services, and with little unallocated spectrum available for those purposes, the adoption of innovative policies that promote and facilitate the efficient use of spectrum is critical to providers’ ability to meet the needs of their customers.

While the Commission’s overall goals are laudable, many of its specific proposals for governing spectrum leasing are likely to render the spectrum lease so much like the sale of the license as to preclude the use of leases altogether. Applying the Commission’s qualification, eligibility, and attribution rules to lessees, for example, would both contradict the licensees’ intent to retain control over the license, and pose potentially insurmountable administrative burdens that would discourage leasing arrangements. In particular, attributing leased spectrum to

^{1/} In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking, WT Docket No. 00-230 (rel. Nov. 27, 2000) (“Notice”).

the lessee's spectrum cap as well as to the licensee's would be extremely complicated and greatly reduce the likelihood that needed spectrum could be leased. Similarly, preventing "entrepreneurs" from leasing their spectrum freely would contradict the Commission's existing policies. The Commission can adequately assure that spectrum will be used only in compliance with its rules by requiring licensees to remain responsible for compliance.

As the Commission has recognized in numerous contexts, "[w]ith increasing demand for radio services, our spectrum management activities must focus on promoting more efficient use of the spectrum as well as increasing the amount of spectrum available for new services while continuing to ensure access to adequate spectrum for essential incumbent services."^{2/} The creation of a secondary market for spectrum will further those goals.

I. FACILITATING SPECTRUM LEASING WOULD RESULT IN SIGNIFICANT BENEFIT TO THE PUBLIC

Spectrum leasing would help meet the widely recognized need for additional spectrum. As the Commission itself has noted, "[i]n recent years, the need for spectrum has increased dramatically as a result of the explosive growth in wireless communications technologies and consumer demand for services."^{3/} For traditional mobile telephone service, the number of subscribers in the United States has "grown from just over 90,000 in January 1985 to more than 86 million, or approximately 32 percent of the country's population, at the end of 1999."^{4/} Carriers need access to additional spectrum to meet this increased demand for wireless service.

^{2/} Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Notice of Proposed Rulemaking and Order, ET Docket No. 00-258 (rel. Jan. 5, 2001) ¶ 13 ("Third Generation NPRM").

^{3/} In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Policy Statement (rel. Dec. 1, 2000) ("Policy Statement") ¶ 3.

^{4/} Policy Statement ¶ 4.

In addition to ensuring that they have adequate spectrum for existing mobile telephony services, wireless carriers must plan to devote significant additional spectrum to wireless data services and advanced, or “Third Generation” (“3G”), services. Strategis Group recently projected that wireless data services would reach 60 percent penetration in the United States by 2007, a dramatic rise from the current 2 percent penetration rate, and that mobile data subscribers would increase to 172 million from 5 million.^{5/} By 2003, 300 million wireless phones worldwide -- one-third of all wireless phones -- will be Internet-ready.^{6/}

Indicative of the demand for 3G services is the rapid growth of AT&T’s PocketNet data service. PocketNet combines AT&T’s wireless digital voice service with the ability to access e-mail and the Internet through a handheld unit.^{7/} Since its introduction last year, close to half a million customers have subscribed to PocketNet service. As the Commission recognizes, “spectrum may be a limiting factor for new technologies and services” because “virtually all spectrum ... has been allocated for various services.”^{8/}

AT&T agrees with the Commission that “a robust and effective secondary market for spectrum usage rights could help alleviate spectrum shortages by making unused or underutilized spectrum held by existing licensees more readily available to other users and uses and help to promote the development of new, spectrum efficient technologies.”^{9/} Most importantly, the

^{5/} See Communications Daily (Jan. 30, 2001) at 5.

^{6/} See “Cellular Phone Carriers Untangle a Wireless Web,” New York Times (July 10, 2000).

^{7/} AT&T Wireless Services Web Site, <www.attws.com/business/gov/explore/plans-phones/pocketnet/faq.shtml>.

^{8/} Policy Statement ¶ 7.

^{9/} Id. ¶ 2.

ability to obtain access to additional spectrum will greatly assist the ability of wireless carriers to make 3G services available to the public.^{10/}

Encouraging spectrum leasing arrangements would allow wireless providers to put spare capacity to use for the purposes for which it is most needed. This, in turn, would help the Commission fulfill its role as spectrum manager and ensure that consumers have access to the most innovative technologies and services available. AT&T encourages the Commission to approach this rulemaking process with these goals in mind, and to implement a policy that will provide the greatest flexibility for spectrum leasing arrangements, and thus spur their use.

II. THE COMMISSION'S SPECTRUM LEASING POLICY SHOULD NOT TREAT LESSEES AS LICENSEES

Although the Commission recognizes that “the best way to realize the maximum benefits from the spectrum is to permit and promote the operation of market forces in determining how spectrum is used,”^{11/} it proposes a complex regulatory scheme that would greatly hinder its goal of creating such a market. In essence, the Commission’s suggested regulation of spectrum leasing would force lessees to assume the role of licensees, with all the accompanying obligations of that status and none of the benefits. Few entities would take advantage of a secondary market if leasing were so encumbered. The Commission should adopt a “hands-off” regulatory approach to the greatest extent possible, ensuring only that licensees retain sufficient control over the spectrum to ensure compliance with technical rules.

^{10/} See Third Generation NPRM ¶ 33 (“The deployment of advanced wireless services . . . could be facilitated by the introduction of increased flexibility and other features designed to encourage secondary markets for spectrum ...”).

^{11/} Policy Statement ¶ 8.

A. The Commission’s Qualification, Eligibility And Attribution Rules For Licensees Should Not Apply To Lessees.

The Commission states that the purpose of this proceeding is to enable “the development of more robust secondary markets” to “help promote spectrum efficiency and full utilization of Commission-licensed spectrum.”^{12/} Its proposals to apply existing qualification, eligibility and attribution rules to lessees,^{13/} however, would have exactly the opposite effect. These rules were designed to apply to licensees, and are justified only as applied to the entity ultimately responsible for the license. Subjecting lessees to the same eligibility requirements as licensees -- as if the spectrum were sold rather than leased -- would discourage potential participants and thus undermine the goal of developing a “robust” secondary market.^{14/}

1. There is no reason to apply the CMRS spectrum cap to leased spectrum.

The Commission’s suggestion that, at least in some cases, it might be appropriate to apply the CMRS spectrum cap to lessees raises substantial concerns.^{15/} To the extent the Commission continues to believe a spectrum aggregation limit is wise, then it is appropriate to attribute that spectrum to the licensee, not the lessee. By leasing its spectrum instead of selling the license, the licensee has indicated its desire to retain control over the license, whether for investment purposes, or because it has plans to use that spectrum in the future. It is the licensee that can enter into or terminate lease arrangements, exercise control over use of the spectrum, and most likely, is ultimately responsible for ensuring that the license is used in a manner that

^{12/} Notice ¶ 2.

^{13/} Id. ¶¶ 44, 45.

^{14/} See id. ¶ 43 (recognizing that “strict adherence to such a proposal might unnecessarily impede the development of many kinds of spectrum leasing arrangements that would serve the public interest”).

^{15/} Id. ¶ 49.

complies with the Commission's rules. To comport with the spirit and intent of the leasing arrangement, attribution of spectrum should follow the entity that is responsible for control of the license. Any other determination would result in unfair double-counting of the spectrum against the caps of the licensee and the lessee.

It is particularly inappropriate to impose new spectrum cap requirements at a time when the Commission has questioned whether any aggregation limits are necessary.^{16/} The spectrum cap was adopted in 1994 to prevent the concentration of control over spectrum in too few hands. But, as Chairman Powell has observed, "many changes in the marketplace have occurred that require the immediate reexamination of this artificial barrier . . . to the acquisition of spectrum."^{17/} Indeed, AT&T has demonstrated in several proceedings that the spectrum cap is no longer necessary to ensure robust competition, and that it has resulted in substantial market inefficiencies.^{18/}

The negative impact of spectrum caps is becoming particularly apparent as the 3G market develops. As discussed above, the explosion in demand for wireless services over the past several years means that the existing spectrum allocated to wireless carriers is needed to satisfy

^{16/} See 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 01-14 (rel. Jan. 23, 2001), ¶ 12 ("2000 Biennial Review").

^{17/} Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Further Notice of Proposed Rulemaking, FCC 00-197, WT Docket No. 97-82 (rel. June 7, 2000), Separate Statement of Commissioner Michael K. Powell, Concurring at 1.

^{18/} See, e.g., In the Matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, Comments of AT&T Wireless Services, Inc. (filed Jan. 25, 1999) at 4-12; In the Matter of AT&T Wireless Services, Inc., Petition for Waiver of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 For the PCS Frequency Blocks C and F Auction to Begin on July 26, 2000, Petition for Waiver at 5-6 (filed Feb. 15, 2000); In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Comments of AT&T Wireless Services, Inc. at 4-6 (filed June 22, 2000).

subscriber growth for first and second generation services. Without access to additional spectrum, wireless carriers will have considerable difficulty in rolling out 3G wireless applications and advanced broadband services.^{19/} While the Commission's proposal to allow spectrum leasing could alleviate this potential difficulty in the short term, application of the spectrum cap to lessees would dramatically hinder the ability of wireless carriers to participate in these new markets.^{20/}

Finally, there are significant practical reasons why counting leased spectrum towards the spectrum cap would not serve the public interest. If leased spectrum were attributed to the lessee, calculating an entity's attributable spectrum could become exceedingly complicated. An entity's spectrum holdings would constantly shift, especially when spectrum was leased for short-term purposes. Additional complications would be introduced if, as AT&T believes should happen, the FCC did not have to consent to spectrum leases, or otherwise be notified of their existence. Under these circumstances, the spectrum cap would be very difficult to administer.

AT&T intends to develop these arguments in the comments it will submit in the 2000 Biennial Review proceeding on the spectrum cap.

^{19/} Although the Commission has stated that it will consider waiving the spectrum cap in order to allow a provider to offer 3G services, see 1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers; Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap, Report and Order, 15 FCC Rcd 9219 ¶ 82 (1999), this has not proved to be a viable option. To gain a waiver the applicant must disclose sensitive business plans, for instance, and meet other burdens. More generally, the waiver process provides no certainty to carriers and does not permit them to engage in the kind of long-term planning necessary for the deployment of advanced services.

^{20/} Applying the spectrum cap to spectrum leases also may have the effect of inhibiting the ability of domestic carriers to compete internationally, as well as at home. The fact that foreign carriers generally are not subject to attribution rules means that foreign wireless providers will be able to develop broadband, advanced, or 3G services more quickly and efficiently than their domestic counterparts. This, in turn, may permit foreign carriers to control technology choices and utilize economies of scale and scope denied to domestic industry. Like the failure to harmonize spectrum internationally, application of a spectrum cap would put U.S. carriers at a significant disadvantage compared to their European and Asian competitors.

2. The Commission should not impose restrictions on the leasing ability of “entrepreneurs”.

Limiting the ability of “entrepreneurs” to lease only to other “entrepreneurs,” as the Commission has proposed,^{21/} similarly would contravene the Commission’s goal of promoting spectrum leasing because it would unnecessarily limit the pool of potential lessees. It is only by allowing the market to function freely, including allowing for the greatest possible number of potential participants, that the Commission can achieve its goal of developing a robust secondary market for spectrum usage.

Restricting entrepreneurs’ ability to lease spectrum also would be a significant setback to the manner in which the Commission currently permits them to use spectrum. Today, there is no rule that precludes entrepreneurs from leasing their spectrum to any carrier that requires capacity. One use of spectrum that has been available to all PCS licensees, including entrepreneurs, for instance, is to serve as a “carrier’s carrier.”^{22/} Indeed, at least one bidder in the initial C-block auction indicated that it would use its spectrum solely in this role, and that it intended to lease capacity primarily to one large carrier.^{23/}

Although the Commission’s stated goal is to allow a more flexible and efficient use of the license, requiring lessees to meet the same eligibility standards as entrepreneur licensees would imbue leasing with the same restrictions as a full transfer of control or assignment of license.

^{21/} See Notice ¶ 47.

^{22/} Depending on the nature of the service it provides, a licensee can be classified as either a common carrier or a private carrier. While PCS is presumptively deemed common carriage, the Commission’s rules expressly permit PCS licensees to demonstrate that their services are, and should be regulated as, private mobile radio services (*i.e.*, that they are not provided for a profit, not interconnected, or not available to the public). 47 C.F.R. § 20.9(b); see also Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1461 (1994).

^{23/} See “MCI Hitches Its Wireless Wagon to San Diego Start-Up NextWave,” Los Angeles Times, Part D, p.1 (Aug. 27, 1996) (discussing entrepreneur NextWave's deal to lease spectrum to MCI and noting that "NextWave's strategy is to serve as a “carriers’ carrier”).

Singling out entrepreneurs for this requirement is unnecessary to ensure the integrity of the Commission's designated entity regulations. An entrepreneur leasing spectrum retains control of its licenses and business, as required by the rules, and the rules' purposes are not affected by the nature of the entrepreneurs' customers (whether carriers or end users).^{24/} Rather, the proposed restriction would harm small businesses and every carrier, regardless of size, that needs additional capacity, and would contravene the Commission's important objective of increasing spectrum usage as a means of alleviating spectrum scarcity.

B. The Licensee Should Remain Ultimately Responsible For Compliance With The Commission's Rules.

The Commission correctly concludes that the licensee must retain ultimate responsibility for ensuring that the spectrum lease complies with all applicable Commission rules.^{25/} Indeed, many of the Commission's rules, if applied to lessees, would cause administrative complications, especially when spectrum is leased for short-term purposes, and could very well result in duplicative administrative burdens. For example, it would not make sense to have the Commission's reporting requirements apply to lessees as well as licensees, since it could potentially result in numerous reports being filed relating to the same spectrum. The Commission's concern that licensees will shy away from leasing if they are not allowed to transfer periodic filing and reporting burdens to lessees^{26/} is unfounded, because licensees obtain

^{24/} For the same reasons, the Commission's proposal to require small businesses to reimburse the government for bidding credits or similar incentives that they received in the auction process (Notice ¶ 53) is misguided. Small businesses that lease spectrum have not been "unjustly enriched" because they are not selling the asset that was discounted. Accordingly, the Commission's partitioning and disaggregation rules -- which apply to the sale of a portion of the license -- provide no guidance in this situation. The administrative complications that would arise in attempting to calculate unjust enrichment penalties in the case of leases that cover different terms amply demonstrate why a lease should not be subject to these obligations.

^{25/} Notice ¶ 27.

^{26/} Id. ¶ 61.

and hold spectrum with the expectation that certain regulatory obligations will accompany the license (and, in any event, remain responsible for the filing if spectrum is not leased).

In keeping with its determination that “market forces” should determine the direction of secondary market development,^{27/} the Commission need not dictate the means by which the licensee enforces compliance with Commission rules. The licensee and lessee should be allowed to divide responsibility for Commission requirements in the lease contract, which can take into account the unique circumstances of a particular lease, the length of the leasing arrangement, and any other relevant factors.

While imposing responsibility for compliance with certain of the Commission’s technical rules on the licensee raises certain difficulties, AT&T believes that the licensee nonetheless should remain ultimately responsible to the FCC for compliance with the rules in this area as well. The licensee can enforce lessee compliance with these rules through contractual means, including the right to revoke the lease for non-compliance, without the need for specific Commission rules in this area. Without the ability to design tailored agreements, spectrum leasing would pose too many risks to the lessor, and would not be used, defeating the Commission’s intent to promote more efficient spectrum use.

The Commission also should refrain from imposing particular verification requirements on the licensee. The licensee should be allowed to rely on statements by the lessee certifying compliance with the Commission’s rules and the Act. Requiring the licensee to conduct due diligence to ensure compliance with Commission rules would unnecessarily increase the burdens associated with leasing spectrum and, thereby, discourage potential lessors and lessees from entering into these arrangements.

^{27/} Policy Statement ¶ 8.

Because lessors and lessees should be able to specify their individual compliance and other responsibilities as part of their contracts, AT&T agrees with the Commission that any disputes arising out of that contractual relationship should be handled in the same manner as any other commercial dispute. Whether the parties agree to arbitration as part of the contract, or turn to the courts to resolve their differences, it is unnecessary for the Commission to assume a supervisory role over these relationships and related disputes.

C. A “Band Manager” Licensing Model Would Decrease The Benefits Of Spectrum Leasing.

Because minimal regulatory intervention is most likely to advance the goal of increased spectrum leasing, instituting a “band manager” licensing model^{28/} would be inappropriate and contrary to the public interest. The Commission should allow any licensed holder of spectrum to lease any or all of that spectrum without approval by or notice to the Commission.

The delay and complications associated with imposing an additional layer of regulatory requirements in order to lease spectrum, whether they take the form of Commission approval of a specific spectrum lease arrangement or a requirement that certain licensees be designated as “band managers,” would serve as a bar to many spectrum leases. The commercial need in the market for leases to respond to immediate business needs is an important part of the reason AT&T supports spectrum leasing. It is often impossible to foresee the events that cause an urgent requirement for additional spectrum. To allow the wireless industry to offer the types of services and the level of responsiveness that the public expects and demands, the Commission should remove as many barriers as possible to the ability to obtain additional spectrum.

^{28/} See Notice ¶ 22.

III. THE INTERMOUNTAIN MICROWAVE CRITERIA ARE NOT RELEVANT IN THE SPECTRUM LEASING CONTEXT

AT&T agrees with the Commission that Intermountain Microwave^{29/} does not provide the appropriate criteria for determining whether a de facto transfer of control has occurred in the spectrum lease context.^{30/} Indeed, application of the first Intermountain Microwave factor -- “does the licensee have unfettered use of all facilities and equipment?” -- could be construed to invalidate leasing, because a lease generally involves some restrictions on the use of facilities by the licensee.^{31/} Similarly, depending upon how the respective businesses of the licensee and lessee are structured,^{32/} the other factors -- including who controls daily operations, who is in charge of employment and personnel decisions, who is in charge of payment of financial obligations, and who receives monies and profits from operation of the facilities -- also could be contradictory to the notion of a spectrum lease arrangement.

The Commission is not bound by Intermountain Microwave to fulfill its legal responsibilities pursuant to Section 310(d). Section 310(d) requires only that the Commission approve transfers of control, and allows the Commission discretion in determining when such a transfer of control has occurred. Although Intermountain Microwave is the test that the Commission traditionally has used to make that determination, the Commission recognizes that it “may limit or overturn the Intermountain Microwave standard by establishing a rational basis for

^{29/} Intermountain Microwave, 24 Rad. Reg. 983 (1963).

^{30/} Notice ¶ 75.

^{31/} See id. ¶ 73 (parties may be “reluctant to enter into leasing arrangements out of concern that they could be found to violate Intermountain Microwave”).

^{32/} As noted above, the licensee could be in the business of leasing spectrum to carriers, and therefore, its “control” of the business would have to be determined with reference to the activities in which it is engaged, rather than with reference to the traditional end user services provided by CMRS carriers.

doing so.”^{33/} A departure from the traditional test is warranted here because the test would preclude a valuable use of the licenses that advances an important Commission goal.^{34/}

The Commission’s proposal to apply criteria that focus on “whether the licensee engaged in leasing has retained sufficient control over the licensed spectrum to ensure its efficient use and use that comports with [the Commission’s] policies and rules”^{35/} satisfies the Commission’s responsibilities under Section 310(d). The Commission’s proposed criteria, with minor modifications, can be substituted for the Intermountain Microwave factors in the spectrum leasing context. In particular, the licensee leasing spectrum should be held to have retained control of its license for purposes of Section 310(d) if it: (1) retains full responsibility for compliance with the Act and the Commission’s rules with regard to any use of licensed spectrum by any lessee or sublessee; (2) obtains a certification from each lessee or sublessee of the lessee’s compliance with any applicable FCC rules;^{36/} and (3) retains full authority to take all actions necessary in the event of noncompliance, including the right to suspend or terminate the lessee’s operations if they do not comport with the Act or the Commission’s rules.

Application of these factors to spectrum leasing would ensure that licensees retain control of their authorizations and accept responsibility for compliance with the Act and the Commission’s rules. The Intermountain Microwave test, in contrast, would create uncertainty about the legality of many leasing arrangements without providing accurate guidance about

^{33/} Id. ¶ 74 n.111, citing Telephone and Data Systems, Inc. v. FCC, 19 F. 3d 42, 48-49 (D.C. Cir. 1994).

^{34/} As the Commission observes, it already applies different tests in other contexts for determining when a transfer of control has occurred. See Policy Statement ¶ 28 & n.41 (noting that although Intermountain Microwave is commonly used in the wireless area, a different test is used to determine the transfer of control of a private radio licenses and yet another test is used to determine the transfer of a mass media license). There is nothing to prevent the Commission from designing a test specific to the spectrum leasing context.

^{35/} Id. ¶ 76.

whether a transfer of control actually has occurred. To encourage the development of a strong secondary market, it is imperative that the Commission use criteria that take into account the nature of spectrum leasing and recognize its differences from traditional spectrum uses.

CONCLUSION

For the foregoing reasons, the Commission should implement rules to facilitate spectrum leasing that minimize regulatory burdens that could discourage the fullest development of a secondary market, and that do not burden lessees with the obligations of Commission licensees.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Howard J. Symons
Sara F. Leibman
Tara M. Corvo
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

February 9, 2001

Douglas I. Brandon
Vice President - External Affairs
David C. Jatlow
Vice President - Federal Regulatory Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

^{36/} As noted above, the Commission should not impose verification requirements on licensees leasing spectrum.

CERTIFICATE OF SERVICE

I, Tara Corvo, hereby certify that on this 9th day of February 2001, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent to the following by hand delivery.

Peter A. Tenhula
Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204F
Washington, D.C. 20554

Bryan Tramont
Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Thomas Sugrue
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room C252
Washington, D.C. 20554

Kathleen O'Brien-Ham
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C255
Washington, D.C. 20554

Paul Murray
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

ITS
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Adam Krinsky
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Mark Schneider
Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

James D. Schlichting
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C254
Washington, D.C. 20554

Diane J. Cornell
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C220
Washington, D.C. 20554

Donald Johnson
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Tara M. Corvo