

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

In the Matter of )  
)  
Spectrum Policy Task Force Seeks )  
Public Comment On Issues Related to )  
Commission's Spectrum Policies )  
)

ET Docket No. 02-135

**COMMENTS OF WINSTAR COMMUNICATIONS, LLC**

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On behalf of Winstar Communications, LLC (Winstar) enclosed please find its comments before the Spectrum Policy Task Force of the Federal Communications Commission.

**SUMMARY**

Winstar provides terrestrial-based, predominately fixed, broadband communications using the area-wide licensed 38.6-40.0 GHz ("39 GHz") and Local Multipoint Distribution Service ("LMDS" or "28 GHz and 31 GHz") bands.<sup>1</sup> The Winstar area-wide licenses cover Alaska, Hawaii and the lower 48 states. Winstar also utilizes the point-to-point licensed microwave bands (including, but not limited to, 6 GHz, 10 GHz, 18 GHz and 23 GHz).

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<sup>1</sup> Most of the assets of Winstar Communications, Inc. ("Old Winstar") were purchased out of Chapter 11 bankruptcy on December 19, 2001 by a wholly owned subsidiary of IDT Corp ("New Winstar"), and New Winstar became involved in company operations pursuant to a contiguously created management agreement that was adopted by the bankruptcy court. The FCC granted the related assignment of the Old Winstar spectrum licenses in a series of actions on April 17, 2002. Some of those assignments were

Winstar respectfully requests that the FCC Spectrum Policy Task Force adopt policies, in alignment with the below-mentioned recommendations, that remove onerous and incessant interference policing burdens from spectrum licensees by providing those licensees with more certainty about the solidity of spectrum interference standards and rules. This can be arranged, in part, by providing the FCC International Bureau, Wireless Telecommunications Bureau, and Office of Engineering Technology with additional engineering and travel resources, as mentioned herein.

Additionally, the FCC is encouraged to complete the ongoing Secondary Markets proceeding in order to further increase the ease by which spectrum rights transfer from licensees to interested purchasing or leasing parties.

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conditioned. Most of those license assignments were consummated last month, except for the assignment of the LMDS licenses, which remains to be concluded, subject to the performance of certain conditions.

## COMMENTS

### Market-Oriented Allocation and Assignment Policies

**Should current, restrictive service and operating rules applicable in many bands be changed to provide licensees with greater flexibility? If so, in which bands and how?**

The Commission should continue to seek new methods, and to improve on existing working methods, for allowing licensees greater flexibility to meet changing consumer demands while also being able to take advantage of the rapid technological innovation occurring today.

#### AREA-WIDE LICENSING

Winstar agrees with and supports the growing FCC policy of allocating large blocks of spectrum on an area-wide basis to a single licensee.

#### SECONDARY MARKETS

Another area that Winstar views that the Commission has begun establishing policies for allowing licensees more flexibility is in the area of Secondary Markets.<sup>2</sup> In the current FCC proceeding on Secondary Markets Winstar articulated the need to allow licensees the additional flexibility to more easily permit spectrum to be used by third parties without requiring licensees to permanently assign their licenses or obtain FCC authority. Allowing Licensees additional flexibility for entering into spectrum lease arrangements creates additional options to put the spectrum to its most efficient use. Winstar also believes that the further opening of secondary markets to third party leases will also

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<sup>2</sup> WTB Docket 00-230

lower transaction costs and should reduce the uncertainty to both the licensee and the third party.

## COORDINATION

When the FCC developed the rules for area-wide licenses it also created a domestic coordination process for managing the relationship between license borders. Licensees in both adjacent frequencies or geographically-bordered markets must contact each other and coordinate under certain defined circumstances. This new coordination process maintains the flexibility of the geographic based licenses while also protecting the rights of other licensees. Unfortunately, the international community, through the International Telecommunications Union (“ITU”), is slow to adopt suitable coordination processes to properly address area-wide licenses that border other countries. The Commission must swiftly secure bi-lateral or multi-lateral agreements for defining these cross border issues, and those agreements must give protection to the licensees that they reasonably expected when they acquired the licenses.

In plain terms, this means that any business owner who, for example, won at auction an area-wide license that borders Mexico, must not have to worry about interference. This is especially true for small businesses. License holders who do not incessantly follow the United States ITU preparatory process to make certain that the United States is not developing policies that will eventually result in interference from terrestrial or satellite services, are running a risk. The preparatory process is predatory and does not protect small licensees. Such licensees have no chance- -due to their small size and understandable focus on running and building a business- - of ever following the

complicated, labyrinth and unending ITU preparatory process. Instead, the U.S. preparatory process needs to always start from the presumption that licensees will be protected. Currently, it is backwards.

**Should incumbent users be given flexibility within their existing spectrum?**

Yes.

**What, if anything, should the Commission do to facilitate efficient restructuring of spectrum held by new licensees and incumbents, i.e., reduce transactions costs, avoid strategic holdouts, and create greater certainty about costs?**

Perhaps the most effective means to facilitate efficient and flexible restructuring of spectrum held by new licensees and incumbents is for the Commission to promote secondary markets for Wireless Radio Services. The Commission should, wherever possible, provide large amounts of spectrum on an area-wide basis to licensees, establish enforceable and firm border interference standards, and then rely on market forces to ensure economically efficient use of spectrum. Market forces should be allowed to create new border interference standards among consenting licensees.

**Should spectrum policy be different in different portions of the spectrum or in different geographic areas?**

Spectrum policy should not vary by spectrum or by geographic area. Spectrum policy should be an overarching guide that provides consistency and certainty.

**Should spectrum policies vary by geographic area according to the relative level of spectrum congestion or use? For instance, should the rules be different in urban areas where spectrum is generally in high demand, than in rural areas where the demand for spectrum is typically low, or in the transition areas where spectrum demand is somewhere between high and low demand regions?**

Spectrum policies should not vary by geographic area. Geographic areas where certain spectrum bands may not currently be in high demand may provide the opportunities to offer new services and expansion of existing services to provide communication capabilities that do not currently exist in those areas. By considering the possible changing of spectrum policies, existing and future plans for provision of those services may be problematic until there is certainty as to what policies may prevail.

### **Interference Protection**

**Are new definitions of “interference” and “harmful interference” needed? If so, how should these terms be defined?**

New definitions are not necessary, nor are they desirable. The existing definitions have served the public, the service providers, the operators and the Commission well through the years and no change should be implemented. However, what may be considered as harmful interference to one service may be acceptable interference to another, and thus mutually consenting licensees must be allowed increased flexibility to make commercial arrangements that allow additional interference beyond pre-set standards.

**What is the impact, if any, of increased flexibility on how harmful interference should be defined and understood?**

Border interference standards for area-wide licensees must be firm and enforceable, and must account for inter-service and international threats. That said, mutually consenting licensees must possess the ability to privately contract for weaker or more strict border interference standards among themselves, should they so choose.

Service quality and service flexibility is an important requirement to serve the needs of customers of Broadband Wireless Access. The service availability necessary to meet the

expectations of many of our customers is currently 99.999% with a Bit Error Rate performance of  $10^{-12}$  or better. In order to provide these types of services in a densely populated urban area, spectrum re-use via low power transmitters in a high capacity cellular architecture is necessary which leads to low fade margins and the need for interference protection for those services. Thus in these cases harmful interference would be characterized as that which would affect the availability, reliability or throughput of these services.

**Does defining power limits (in-band and at service area boundaries) and coordination procedures in the Commission's rules provide sufficient control over interference as new uses are introduced by licensees? What other regulatory measures are needed, if any?**

Defining power limits (in-band and at service area boundaries) does provide some control over interference. However, as mentioned previously, coordination and border interference standards must not be a moving target and must be enforceable on a domestic, international, and inter-service and intra-service basis.

**If the Commission adopts new policies to address interference, should the rights of new spectrum users be defined differently from those of the present incumbents? If yes, how?**

The rights of the incumbent users must continue to be protected to assure that their investment and customer base is not harmed by new users. The ability of incumbent users to provide for technical innovation and increased services within the limits of their licenses should not be infringed.

**In lieu of, or to complement, technical rules related to interference, are there processes that the Commission could consider that would allow private parties to more expeditiously resolve interference issues and disputes, for example, through negotiated agreements, mediation, arbitration or case-by-case adjudication?**

Parties should be allowed to reach agreement on interference issues based upon negotiations and business arrangements that might be mutually beneficial. These agreements must not infringe on the protection rights of other spectrum users and license holders.

The FCC should expressly allow private parties to contract around established power, coordination, and border interference limits.

**Some parties assert that the Commission should adopt rules for interference that are based on economics, and not purely technical, in nature. They argue that efficient interference management should involve an economic balancing between the parties using the spectrum. Would greater use of these types of alternatives lead to more certain and expeditious resolution of interference issues?**

The Commission must balance the need for technical rules to assure the maximum compatibility of services in shared and adjacent spectrum with the recognition that economics can play an important role in maximizing the use of that spectrum.

Commission policies should allow for economic business arrangements to be negotiated to resolve interference issues, while protecting the interests of third parties.

**Should the Commission adopt mandatory spectral efficiency standards?**

No. The Commission should not pursue any mandatory regulations nor fees to enforce a bits per Hz or Hz per square mile per minute or Hz per population coverage or any other arbitrary means to enforce what some may consider as measures of spectrum efficiency.

While technologists may argue that these types of methods are needed to assure maximum information carried for minimum spectrum used; there has been and will continue to be much disagreement about what would be an appropriate measure.

By contrast there is widespread agreement that economic factors provide the best incentive and the best measure of efficient use of spectrum. The “Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets” Notice of Proposed Rulemaking (NPRM) (WT Docket No. 00-230) has the potential to provide licensees with the much needed flexibility to develop and use spectrum that would otherwise be under utilized. The Commission states in the NPRM “the development of more robust secondary markets will help promote spectrum efficiency and full utilization of Commission-licensed spectrum and thereby make more spectrum available for the purposes for which it is needed.”

**Do any existing Commission rules inhibit efficient use of the spectrum? If so, how should they be changed?**

As stated in the above mentioned NPRM, rules that unnecessarily inhibit the development of secondary markets should be removed, relaxed, or modified to eliminate unnecessary impediments. The comments and reply comments of Winstar in that proceeding provide significant support for Commissions proposals and recommended modifications where considered appropriate. A promulgation of modified rules that take into account the expressed concerns would go far toward improving spectrum efficiency.

**Public Safety Communications**

**What mechanisms can be developed to ensure the availability of dependable, interoperable and cost-efficient radio-based and other Communications services among local and state public safety and federal government agencies in their use of spectrum for public safety, law enforcement, homeland security, and critical infrastructure protection?**

The use of wireless services provided by the private sector, that meets the requirements of the various government agencies, as an adjunct to self-provided service should be pursued as an opportunity to assure dependable, interoperable and cost efficient services

with the necessary diversity that would survive foreseeable man made and natural catastrophes.

Currently no comprehensive plan exists for maintaining redundant services in key commercial and government buildings in the event of an unplanned outage of the primary service.

As recommended in the testimony of Joseph M. Sandri before the Senate's Subcommittee on Science, Technology and Space on December 5, 2001, certain broadband spectrum bands should be identified and made available for use in natural and man made emergencies. Arrangements can be made with the private sector to warehouse associated equipment to provide the needed services at strategic locations to be used should such an emergency arise.

### **International Issues**

**What role should international/global considerations play in spectrum policy in the United States? And conversely, how should U.S. preparations for regional and international meetings on spectrum policy take into account domestic spectrum policy decisions?**

The U.S. should not have different spectrum policy positions domestically and internationally. U.S. domestic policy should be reflected in international positions and proposals. International spectrum policy realities should be taken into account in developing domestic spectrum policy. Many private sector companies seek to do business on a global basis and consistent policies, rules and requirements are an important step in planning and implementation. The Bureaus require additional, long-term engineering and travel resources to appropriately consult each other and industry

developing or approving positions or proposals for international meetings. The International Bureau, the Wireless Telecommunications Bureau and the Office of Engineering and Technology all should have additional, permanent engineering staff dedicated to the ITU process. Domestic proceedings, and the bureaus and offices involved in those proceedings, should be an integral consideration in the process addressing similar issues in the international arena.

It should not be necessary for private industry to support and defend U.S. spectrum policy in the international arena, such as the ITU, without a properly supported and funded Commission. FCC rules and regulations, ordered after extensive domestic proceedings should not again be the subject of controversy in preparation for, or at international meetings among U.S. participants; some of whom may not agree with the result of the domestic proceeding.

**Does the International Telecommunications Union (ITU) spectrum allocation process, as codified in the ITU Radio Regulations, facilitate or impede development of domestic spectrum policies?**

The development of domestic spectrum policies are impeded by the extremely lengthy time intervals, and the usually very contentious ITU spectrum allocation process. The domestic process can itself take a long time to appropriately consider all positions, and develop the necessary record before rules and regulations are promulgated. However, in some cases that process is further delayed waiting for an international spectrum allocation process to culminate at a Radio Conference. In some cases the international allocation process may also lead to a reconsideration of rules and policies that may have already been settled domestically.

The dynamic business environment and the desire for rapid introduction of advanced technology in the United States can be slowed down considerably by the plodding processes of the ITU. There are also diverse interests and forces that drive ITU decisions that may not be in the best interests of the U.S. business environment and may adversely affect competitive U.S. interests, vis a vis other geographic regions.

**Are there ways in which the Commission can or should improve the coordination process with Canada and Mexico? If so, how?**

The Commission should be commended for its efforts to harmonize the spectrum policies of Canada and Mexico with those of the U.S. and for its efforts with those countries to eliminate potentially contentious border issues. In some cases it may be easier to get agreement with one administration than the other. A particular case in point is the “Arrangement Between Canada and the United States on Principles to Govern the Use of the 37.5-42.5 GHz. Band”, released on May 28, 2002. Winstar understands that negotiations with Mexico to consummate a similar agreement are in progress and recommends that efforts should continue and perhaps be strengthened to complete a comparable agreement and assure consistent policies with our neighbors.

**CONCLUSION**

Winstar respectfully requests that the FCC Spectrum Policy Task Force adopt policies, in alignment with the aforementioned recommendations. In particular, those policies should remove onerous interference policing burdens from spectrum licensees by providing licensees with more certainty about the solidity of spectrum interference standards and rules. Additionally, the FCC is encouraged to complete the Secondary Markets

proceeding in order to further increase the ease by which spectrum rights transfer from licensees to interested purchasing or leasing parties.

Respectfully submitted,

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