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MAIL ROOM

July 1, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Submission of Cantor Fitzgerald Telecom Services, LLC, WT Docket No. 00-230

Dear Ms. Dortch:

Cantor Fitzgerald Telecom Services, LLC ("Cantor Telecom") hereby makes this *ex parte* submission to the Commission in the above-referenced docket. Cantor Telecom applauds the Commission's efforts to find ways to allow the market to improve the efficiency and efficacy of spectrum allocation to its highest and best use. Cantor Telecom recognizes that an extensive record has been developed in this proceeding. As a potential participant in this marketplace, Cantor Telecom desires to supplement the record by briefly setting forth certain principles which, Cantor Telecom submits, should guide the Commission in shaping regulation to facilitate the development of an effective, efficient secondary market in wireless spectrum.

A. Description of Cantor Telecom

Cantor Telecom is a subsidiary of Cantor Fitzgerald, L.P. ("Cantor Fitzgerald"). For over 55 years, Cantor Fitzgerald has been a market leader in the most efficient and cost effective trading. Cantor Fitzgerald is the leading broker-dealer in the U.S. government bonds and notes and is a major participant in U.S. agency bonds, mortgage backed securities, European and Asian government bonds, corporates, Eurobonds, U.S. municipals, repos, swaps and options, and all other major fixed income and credit market securities. The Cantor group of companies currently has more than 1,000 employees in offices throughout the U.S., Canada, Europe and Asia. For more information, see http://www.cantor.com/.

Cantor Fitzgerald is a majority owner in eSpeed, a publicly traded company. eSpeed enables market participants to transact business online instantaneously, more effectively and at a lower cost than traditional trading methods. eSpeed's electronic marketplaces today permit users to conduct trades in such products as bonds, bandwidth, futures, energy, telephone minutes and

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natural gas. For more information, see http://www.espeed.com/. eSpeed's platform can readily be adapted for trading in other telecommunications products, including wireless spectrum.

Cantor Fitzgerald's subsidiary Cantor Telecom brokers telecommunications infrastructure and services, including dark fiber, collocation, conduit, and lit fiber. Cantor Telecom is one of the industry leaders in these areas in the United States.

Cantor Telecom's experience shows that it is possible to create a trading market in the communications sector, allowing buyers and sellers to find each other quickly. Provided that certain minimal conditions are met, the market can work efficiently and effectively to facilitate the allocation of resources to their highest and best use. Intermediaries such as Cantor Telecom enable these markets to work more efficiently by providing a central location for buyers and sellers to find each other and to do business on the basis of standardized terms and conditions.

B. Discussion.

1. The Potential for a Working, Efficient Secondary Market is Great If the Right Preconditions Are Met.

Cantor Telecom submits that an effective secondary market in wireless spectrum is very attainable if the FCC exercises as much regulatory restraint as possible, consistent with statutory requirements. Cantor Fitzgerald's experience shows that it is quite possible to make markets in a variety of products, allowing buyers and sellers to find each other quickly and easily. Provided that certain minimal conditions are met, as described below, the market can work efficiently and effectively to facilitate the allocation of resources to their highest and best use. To the extent that the use of spectrum today is characterized by shortages in some areas and surpluses in others, as the record in this proceeding strongly suggests, the establishment of such a market would go far to alleviate this imbalance.

Cantor Telecom observes that the industry is developing new equipment that can be easily re-tuned to take advantage of unused spectrum on a short-term basis, thereby allowing lessees of spectrum in a secondary market to use the leased spectrum at lower cost and with greater speed and flexibility. The European Commission has recognized these developments, having recently published a new Policy Paper[1] acknowledging that "secondary spectrum trading has an important role to play in shaping . . . the future 3G [Third Generation Wireless] sector."[2] It has also begun a dialogue with industry and national regulators on this issue.

Intermediaries such as Cantor Telecom can make these markets work more efficiently by making it easy to match up buyers and sellers. A party with excess capacity need make only one call, or one electronic posting, to be assured that a broad range of potential purchasers is made aware of the availability of the capacity. At the same time, a party in need of capacity can go to one place to look for it. This clearinghouse function obviously considerably reduces the

[1] EC Communication, "Towards the Full Roll-Out of Third Generation Mobile Communications" (June 11, 2002), COM(2002) 301 final.
[2] *Id.* at 32.

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transaction costs to both buyer and seller, and makes both short- and long-term transactions possible. Intermediaries such as Cantor Telecom can also make these markets work more efficiently by reducing transaction costs associated with negotiating individual contracts, allowing the parties to do business on the basis of standardized terms and conditions.

Finally, brokers and other intermediaries can provide transparency to the marketplace by acting as repositories of information as to the supply of and demand for products. In this respect, they can be helpful to the Commission in understanding how well the market is functioning.

2. Responses to Specific Issues in Notice of Proposed Rulemaking.

In response to some of the specific issues raised in the Commission's Notice of Proposed Rulemaking ("Notice") in this proceeding, Cantor Telecom believes generally that the Commission should be guided by the principle that the market will best be served if leasing arrangements are permitted with maximum flexibility.

First, the record shows that many of the inefficiencies present in the spectrum allocation process today stem from the fact that the current methodology is fairly inflexible. For the most part, it allocates chunks of spectrum of a fixed size, in a fixed geographic area, for a fixed time. Portions of these discrete chunks may not be usable by a licensee for some period of time. For example, a licensee may not need or wish to cover all of its geographic area during the early stages of its business plan. Traditionally, the potential for use of this spectrum in such areas and during such times would be wasted. The secondary market the Notice contemplates could go a long way toward reducing or eliminating this waste if the licensee is given sufficient flexibility in determining what portion of the asset represented by its license right it can do without, and where and for how long it can do without it. Thus, licensees should be allowed to subdivide their rights, as to duration, geographic scope and quantity of frequency, and to be allowed to determine what portion or portions of their rights, as so subdivided, to lease downstream.

Similarly, efficiencies are encouraged if trading is facilitated at all points of the facility-construction cycle. Accordingly, licensees should be permitted to convey spectrum use rights alone, rights plus facilities or simple capacity. In addition, more than one round of trades may be needed to allow the market to seek out the best allocation of an asset. Therefore, sublessors should be allowed the same flexibility as lessors in regard to how to sublease spectrum, both as to how to subdivide it and in what form (spectrum use, facilities plus rights, simple capacity) to sublease it.

One of the key benefits of such flexibility would be that it could allow the emergence of a short-term market, which would satisfy short-term needs for communications capacity with minimum transaction cost and without undue regulatory delays. For example, the sponsors or broadcasters of a major sports event might need a large amount of spectrum, but in a limited geographic area, and only for a few days. Similarly, the general contractor for a large construction project might have radio needs in a circumscribed area for several months. A flexible market would meet these users' needs in a highly efficient manner.

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Cantor Telecom recognizes, of course, the Commission's statutory mandate to manage the spectrum in a manner that furthers the public interest and in particular to establish and enforce standards to prevent harmful interference. However, licensees should be permitted to discharge responsibility for compliance with commission rules in a manner that does not unnecessarily limit the efficiency of the market. If a secondary market is to work effectively, licensees cannot be expected to micromanage that portion of their spectrum rights which they have leased to downstream users. Cantor Telecom suggests that licensees may be included in the Commission's enforcement process in a manner that recognizes their limited ability to exercise complete dominion over leased spectrum on a real-time basis.

Thus, licensees should be permitted to rely in the first instance on standardized contract provisions binding the lessees of the spectrum to comply with the Commission's regulations, including those dealing with interference protections. In the event a violation by a downstream user is detected, the licensee should be permitted a reasonable opportunity to cure such violations. And, because a licensee's ability to seek a remedy under its agreement would depend on the factual question of whether a rule violation is in fact taking place, the Commission should be ready to rule quickly on disputes regarding rule compliance. This last point is particularly important because a licensee's attempt to remedy a rule violation may be viewed as a breach of the lease agreement if the lessee does not agree that the rules are in fact being violated.

By contrast, contractual disputes not involving compliance with the Commission's rules should be decided in the same manner as other commercial disputes, not by the Commission. These disputes will typically be purely commercial in nature, and will not involve application of the Commission's specialized expertise. Accordingly, the usual dispute-resolution forums for such disputes – courts or arbitrators – will be well-equipped to handle them. Thus, the Commission need not divert its limited resources into the resolution of these disputes.

The Commission should also expressly recognize that there is a role for market-making intermediaries such as Cantor Telecom. Such intermediaries would have expertise in matching up spectrum (as with other commodities) with lessees who will make the most efficient use thereof. Such intermediaries may be strictly brokers or run trading floors without taking a leasehold or similar position in the spectrum rights themselves. Because of their purely market-facilitating functions, such intermediaries should not be required to ensure compliance with Commission rules; this responsibility should instead be shared by licensees and the end users of the spectrum.

Finally, Cantor Telecom urges the Commission to review with care its eligibility and use restrictions to determine the extent, if any, to which they remain necessary to protect the public interest. It would help the secondary market to develop if the commission would continue to loosen or eliminate use and eligibility restrictions on spectrum to increase the ability of parties to trade freely in it.

Please associate this letter with the file in the above-referenced docket. If there are any questions, please contact the undersigned.

Respectfully submitted,

Patrick J. Whittle
Counsel for Cantor Fitzgerald Telecom Services, LLC

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
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