

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

In the Matter of)
)
Commission Seeks Public Comment on) ET Docket No. 02-135
Spectrum Policy Task Force Report)
)
To: The Commission)

Via the ECFS

**REPLY COMMENTS OF AGERE SYSTEMS ON THE REPORT OF THE
COMMISSION’S SPECTRUM POLICY TASK FORCE**

Agere Systems (“Agere”) respectfully submits its Reply Comments on the Report of the Commission’s Spectrum Policy Task Force (the “Report”) in the above-captioned Proceeding.

As a leading manufacturer of devices, and components of devices, that operate under Part 15 of the Commission’s rules, as well as components for CMRS equipment, Agere is an interested party in this proceeding.

According to the Order (ET 02-3400) released December 11, 2002, the deadline for filing Reply Comments in the above-captioned matter was extended to February 28, 2003. Therefore these Reply Comments are timely filed.

We appreciate the opportunity to offer these Reply Comments for the Commission’s consideration.

INTRODUCTION

1. From a review of the body of Comment to date in this Proceeding it is apparent that there are basically two generally divergent opinions on how the Commission should best modernize its spectrum allocation policies. These divergent views can generally be associated with those who hold (or seek to hold) licenses issued by the Commission and those who employ the segments of the spectrum where license-exempt devices are permitted to operate.
2. The difficult task facing the Commission is to balance the needs of all current and likely future users of the spectrum, both licensed and license-exempt, in ways that maximize public access to the spectrum, maximize the efficient use of the spectrum, provide for economic growth, provide for the cost-effective provision of needed services to the public, and promote the overall public interest.
3. Without detracting from the economic or public interest value of licensed uses of the spectrum, we would like to point out, that license-exempt applications and devices have a long and compelling history of technical innovation, advancement, and in recent years have been a bright spot of innovation and economic growth in an industry stricken by a severe downturn.
4. Therefore, Agere believes that it is important that the Commission, *as a matter of policy*, recognize that the concerns of license-exempt interests, and their increasing need for access to spectrum resources, are a legitimate, compelling, and important factor to users and the economy as a whole; as are those of the users and licensees of licensed spectrum.

LICENSED SERVICES HAVE LEGITIMATE NEEDS, BUT SHOULD NOT BE PERMITTED TO INHERENTLY MONOPOLIZE SPECTRUM ACCESS

5. Agere fully agrees that licensed services deserve adequate protection from harmful interference. We believe, as stated in our original Comments in this Proceeding, that it is technically feasible, *in the near-term*, for the Commission to provide numerous, diverse opportunities for increased sharing by low-powered, license-exempt applications of spectrum that may be under-utilized by licensed services without negative impact to the incumbent licensees' systems and/or services.

6. While we support the general notion of "flexible use" of spectrum by licensed services, and recognize it is clearly within the Commission's authority to promulgate rules promoting flexibility in the *use* of spectrum,¹ it is nevertheless also the Commission's duty to manage the *publicly-owned* resource that the radio spectrum represents in a manner that protects the overall public interest.

7. To quote from the Comments of the New America Foundation, et al, "*The Commission must ensure that its new spectrum policy does not become an invitation for private interests to feast at the public trough and leave unlicensed uses and other public users the spectrum leftovers.*"

¹ (*But not ownership, or quasi-ownership, thereof...* as elaborated later in these Reply Comments)

“SECONDARY MARKETS” ARE IMPRACTICAL AS A MEANS OF PROVIDING SPECTRUM ACCESS TO LICENSE-EXEMPT APPLICATIONS AND DEVICES

8. While Agere believes that the notion of licensees being permitted to lease access to spectrum for which they hold licenses through “secondary markets” may have some merit and utility *in licensed-to-licensed arrangements*, we believe that it is clear that *the concept does not scale to licensed-to-license-exempt arrangements*, due to the totally decentralized nature of the usage, markets, and business models for license-exempt applications and devices.
9. It is simply not feasible for millions of individual businesses and consumers to negotiate with licensees for access to spectrum in a “secondary market.”
10. We also believe that, when presented with credible opportunities for increased sharing, the Commission must diligently explore those possibilities, and that incumbent licensees should not effectively hold a “veto power” over such matters.

THE COMMISSION SHOULD NOT ADOPT POLICIES CONVEYING “PROPERTY RIGHTS” TO LICENSEES

11. Agere also firmly believes that the conveyance of permanent (or quasi-permanent) and exclusive property rights in the frequencies of incumbent, or prospective, licensees is generally contrary to the public interest and, furthermore, contrary to Sections 301 and 304 of the Communications Act.²

² Section 301 of the Communications Act explicitly states that:

“It is the purpose of this Act to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and period of the license.” (emphasis added)

Section 304 of the Communications Act reads:

“No station license shall be granted by the Commission until the applicant therefore shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.”

12. Thus, we believe that requests by incumbent, or prospective, licensees for such permanent rights, or recommendations from elements of the Commission's staff in this direction, *must* be rejected by the Commission.

13. To be totally clear - Agere is not "anti-licensed use" or "anti-licensee." On the contrary, we fully recognize the necessity for licensing in many situations, as well as the rights and expectations of licensees to be able to exercise the rights conveyed by their licenses with reasonable protection from harmful interference from other users of the spectrum, whether they be other licensees or license-exempt applications and devices.

14. However, we share the concern voiced by several consumer advocacy and public policy groups that the Commission not stray from its mandate to act as the trustee of the publicly-owned radio spectrum under pressure that may be mounted from time to time by incumbent licensees, who may be intent on changing the nature of licensing from what is outlined in the Communications Act into some virtually perpetual property right. Such a perpetual license would permit said licensees to do with the spectrum as they please and to unilaterally exclude all others from reasonable use thereof.

15. While we *fully* agree that licensed services deserve appropriate protection from harmful interference, we also *strongly* believe that it is not necessary to, and the Commission *should not*, adopt policies that would award perpetual property or quasi-property rights, to incumbent and prospective licensees.³

16. Licensees should not be permitted, by Commission policy, to assert property rights, or quasi-property rights, over the *publicly-owned* resource that the radio spectrum represents in ways that prevent reasonable and technically feasible sharing of spectrum by license-exempt applications and devices, either now or in the future.

³ And we would again assert that to do so would fly in the face of Sections 301 and 304 of the Communications Act.

17. To permit this would have an unnecessary, chilling effect on the potential for future, technology-based approaches for providing greater public access to spectrum, services, and applications.

18. We encourage the Commission to take this into consideration and to make every effort to enact policies that, consistent with reasonable protection of licensed services, make available every possible opportunity for increased sharing of spectrum by license-exempt applications and devices.

MORE SPECTRUM IS NEEDED FOR LICENSE-EXEMPT APPLICATIONS

19. Clearly, more spectrum is needed for license-exempt applications and devices, and still more will be needed in the future. We therefore encourage the Commission to take steps to expeditiously allocate significant “commons” spectrum dedicated specifically for the use of license-exempt applications and devices, in addition to enacting policies that maximize opportunities for license-exempt applications and devices to share other spectrum on a non-interference “underlay” basis.

20. To fail to provide both increased sharing opportunities and dedicated spectrum for license-exempt applications and devices is likely to stifle the continued innovation in technology, applications, and services that license-exempt devices are, in many cases, uniquely able to provide, adversely impacting both economic growth and the availability of services that the public increasingly depends upon.

SUMMARY

21. To summarize the major points addressed in more detail above, Agere believes that the Commission should:

- when considering or authorizing “flexible use” in licensed spectrum, refrain from adopting policies that effectively grant licensees perpetual property rights or quasi-property rights that convey to such licensees an effective “veto power” over the Commission’s ability to authorize, where technically feasible, sharing opportunities for license-exempt applications and devices on a non-interference basis;
- recognize that the concept of “secondary markets” is economically infeasible as a means of allowing license-exempt applications and devices to share spectrum with licensed services on a non-interference basis;
- make every effort to enact policies that make available reasonable opportunities for increased sharing of spectrum by license-exempt applications and devices;
- take steps to expeditiously allocate significant dedicated “commons” spectrum for use by license-exempt applications and devices .

Respectfully submitted,

/s/

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