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May 5, 2003

Via Electronic Submission

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

Re: ***Ex Parte Communications***
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets
WT Docket No.00-230

Dear Ms. Dortch:

This letter serves as notification that on this date Luisa Lancetti of Sprint Corporation and Diane Cornell of CTIA, had separate meetings with Jennifer Manner, Legal Advisor to Commissioner Abernathy; Sam Feder, Legal Advisor to Commissioner Martin; and Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein. Nancy Zaczek of the Wireless Telecommunications Bureau also participated in the meeting with Ms. Zaina.

The purpose of the meetings was to discuss the CMRS secondary markets proceeding currently pending before the Commission. A copy of the presentation material discussed at the meetings is attached hereto.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please associate this letter with the file in the above referenced proceeding.

Respectfully submitted,

Luisa L. Lancetti

Attachment

cc: Jennifer Manner
Sam Feder
Lisa Zaina
Nancy Zaczek
Diane Cornell

Promoting Efficient, Effective Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

WT Docket No. 00-230

Sprint Corporation

May 2003

A Robust Secondary Spectrum Market Has the Potential to Achieve Enormous Public Benefits

- Congress has directed FCC to promote the "efficient and intensive use of the electromagnetic spectrum." 47 U.S.C. § 309(j)(3)(C).
- Spectrum Task Force has noted fundamental problem today: "spectrum access is a more significant problem than physical scarcity of spectrum, in large part due to legacy command-and-control regulation that limits the ability of potential spectrum users to obtain such access." Report at 3 (Nov. 2002).
- A robust secondary market would complement the FCC's primary assignment function and would allow spectrum use to be determined by market and economic demand.
- There would be many benefits from a robust secondary market:
  - More spectrum would be made available for use, which will open new opportunities for new technologies, entrepreneurs, small businesses and others;
  - Rural service opportunities will be facilitated;
  - Spectrum use can change as market needs change;
  - Spectrum efficiency would be intensified; and
  - Development of new "frequency agile" radio equipment would be promoted.
- Spectrum Leasing Is a "Win-Win" Proposition for Spectrum Users and the Public

There Is Widespread Consensus Supporting the FCC's Secondary Markets Proposal

- Spectrum Task Force: "[S]econdary market mechanism[s] are the best means of achieving this goal [of promoting economic efficiency]. * * * The secondary markets model . . . solve[s] [spectrum] access problems. * * * [T]he secondary market approach has significant potential to foster opportunistic technologies, such as agile-frequency-hopping radios, software defined radios, and adaptive antennas, at reasonable transaction costs. * * * Task Force recommends as an essential first step that the Commission take action to adopt rules in the ongoing Secondary Markets proceeding." Report at 21, 55 and 57.

- Office of Engineering and Technology: "The staff recommends that the Commission make the reinvigoration and conclusion of its Secondary Markets proceeding a significant priority." OET Report, 2002 Biennial Review at 7 ¶ 13 (Dec. 31, 2002).

- NTIA: "Administration . . . urge[s] the Commission to act promptly to conclude this proceeding and to permit leasing and eliminate other barriers to the development of secondary markets for spectrum. * * * Given the need for innovative approaches to maximize use of the finite radio spectrum and a record indicating overwhelming support for this approach, the time is ripe for the Commission to act." NTIA Letter at 1 and 6 (March 7, 2002).

- 37 Concerned Scientists (including six former FCC economists): This "proceeding is of great importance to American consumers, entrepreneurs, and the growth of our economy. . . . Commission can help relieve the 'spectrum shortage' that is choking key points of communications network development. * * * We strongly encourage the Commission to adopt market-oriented rules opening the radio spectrum and capturing its full potential for society." Comments at 2 and 7 (Feb. 7, 2001).

- Small Business Administration: SBA "supports the FCC's efforts and believes a thriving secondary market may provide opportunity for small businesses and may help reduce fallow spectrum." Comments at 1 (Feb. 8, 2001).

- Rural Interests: "[I]ssues involving spectrum leasing opportunities are of significant interest to rural telcos. They have expressed interest in gaining access to spectrum usage rights through secondary markets." *Spectrum Use in Rural Areas NOI*, FCC, 02-381, at ¶ 14 (Dec. 20, 2002). *See also* Spectrum Task Force Report at 59 (Secondary markets would "improve providers' ability to gain access to spectrum in rural areas.").

The Commission Has Ample Statutory Authority to Adopt Its Proposal

- Section 310(d) of the Act requires FCC to approve a "transfer of control" of a radio license.
- Congress intentionally left the definition of the word 'control' out of the Act because defining term would be "difficult to do . . . without limiting the meaning of the term in an unfortunate manner." H.R. Rep. No. 1850 at 4-5 (1934).
- The Supreme Court has recognized that FCC has broad discretion to interpret requirements of the Communications Act. *See, e.g., National Broadcasting* v. *FCC,* 319 U.S. 190 (1943).
- The FCC has already determined in a wide variety of contexts (*e.g.,* band managers, Instructional Television Fixed Service (ITFS), fixed satellite) that leasing of spectrum not only is consistent with the Act, but promote the Act's objectives.
- The six-factor 1963 *Intermountain Microwave* control test, adopted 20 years *before* the first cellular system was deployed, does not provide an appropriate framework for control determinations.

FCC Should Avoid Adopting Rules That Would Limit the Effectiveness and Potential for a Robust Secondary Market

- FCC has recognized that secondary markets will function "best when licensees are free to transfer spectrum usage rights to different uses and users with minimum of administrative review" and that any restrictions on leasing would "reduce the scope and potential of secondary trading and, at a minimum, impose additional cost and delay." *Secondary Markets Policy Statement,* 15 FCC Rcd 42178, 24188 ¶ 26 (2000).
- Parties should be free to use negotiated contracts to develop terms that address unique needs of each situation.
- FCC's goal should be to remove restrictions so market forces are free to operate – and should ***NOT*** mandate the terms upon which spectrum markets emerge.
- Licensee control can be maintained with spectrum leasing. FCC should expressly authorize leasing, and should do so in way that facilitates market transactions which will serve the public interest.