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 Secondary Markets	)))	WT Docket No. 00-230

COMMENTS OF SPECTRUM MARKET, LLC

Spectrum Market, LLC ("Spectrum Market") files herewith, by its attorneys, its Comments in this proceeding in response to the Commission's Report and Order and Notice of Further Rulemaking released October 6, 2003 ("the Notice").[1]

I. Introduction – Spectrum Market as "Market-Maker"

Spectrum Market was founded in 2000. It combines an electronic spectrum trading system, which it has been developing over a considerable period of time and which is nearing completion, extensive experience in wireless, and a commitment to the development of efficient secondary spectrum markets. Spectrum Market was developed to offer spectrum sales and leasing services, using both negotiated sales and an electronic auction exchange, as well as advisory services, all of which draw upon the wireless and spectrum expertise of the founders and employees of the company.

Spectrum Market is, indeed one of the

> "independent third parties, i.e., parties other than licensees and potential licensees, to emerge as 'market-makers' that not only collect and disseminate information, but actually negotiate, broker, or otherwise facilitate spectrum leasing transactions."[2]

[1] FCC 03-113.
[2] *Id.* at 227.

II. Information-Gathering Mechanisms

In line with Commission expectations, Spectrum Market and, we are confident, other interested parties, will develop procedures for collecting pertinent information and making it available as appropriate on its website, www.spectrummarket.com. Spectrum Market will list several bands of spectrum on its website, and will provide interested parties with the ability to fully analyze the relevant data associated with that spectrum in an interactive way. Spectrum Market will present not only the information available in the FCC's databases, but also information Spectrum Market has collected from the licensee itself, including data that the licensee would not wish to make generally public due to confidentiality concerns. A crucial aspect of Spectrum Market's online spectrum exchange activities will be the collection and dissemination to prospective bidders of a level of information sufficient to permit informed bidders to compete with each other on an equal basis. and informed licensees to decide whether and on what terms to become prospective sellers or lessors of spectrum.

In addition, of course, the Commission and its databases will continue to be a prime source of information for all concerned. In light of the Commission's rulings in the instant proceeding, Spectrum Market submits that the ULS database in particular should be modified in at least two respects so as to be of maximum utility. That database, as the Commission is aware, relates to wireless licensed facilities.

First, the ULS should be modified in light of the establishment of de facto as well as de jure ownership transfers so as to provide full information concerning the de facto as well as the de jure owners of licensed facilities. And, second, the ULS should provide information concerning spectrum leases, either copies of the leases themselves or specification of key terms, such as the expiration date of the lease. As the Commission knows, copies of leases of spectrum

are required to be filed with the Commission in the ITFS and MDS services, where leases are very common. With the decisions the Commission has made in the instant proceeding, leases can be expected to become similarly common in the services to which these rules apply, particularly, but not limited to, the cases in which there are de facto transfers, and comparable information should therefore be required for these services.

III. Expansion of Reach of the Commission's Secondary Markets Principles

In the Notice, the Commission seeks comment on whether and how to broaden the reach of the principles it has already adopted in order to facilitate market-based spectrum allocation. This has two basic aspects. The first is the question of expansion of these principles within the services which the Commission has already ruled should be subject to the new Secondary Markets principles:

> "The record in response to the NPRM thus suggests the need to explore in greater detail how to grant increased flexibility to parties to design leasing arrangements that are responsive to their business needs and to implement them without facing unnecessary regulatory delays.
>
> Similarly, we want to assess whether the public interest objectives and policy goals that underpin any revised approach to de facto transfer leasing that we may adopt are also applicable to some categories of outright license transfers and assignments."[3]

The second basic question is whether the Secondary Markets principles should be expanded to apply to additional services:

> "We wish to consider extending our leasing policies, as adopted in the Report and Order and as they may be modified based on this Further Notice, to additional spectrum-based services. In light of our conclusions about the public interest benefits of spectrum leasing in the services for which we have adopted spectrum leasing policies, we consider in this Further Notice whether we should extend the policies adopted in the Report and Order to some of the radio services that we have excluded to date."

A. Increasing Flexibility and Reducing Regulatory Delay

Spectrum Market supports the Commission's proposals which are designed to permit

[3] *Id.* at 240-41.

increased flexibility and decreased regulatory delay associated with the leasing of spectrum, and, in some cases, the assignment or transfer of licenses, particularly assignments or transfers that are de facto only. Since the Commission has made clear its belief in the efficiency of market forces as a spectrum allocation mechanism, it is unnecessary for Spectrum Market to extol their value.

To the extent that regulatory delays can be prevented or at least reduced, transaction delays and other costs are reduced. When a long time is required to seek and obtain Commission consent, however, for the completion of a transaction or a group of related transactions, the efficacy of the market is seriously reduced, particularly if the outcome is at all doubtful. The need for a seller to continue to operate facilities while Commission consent is being sought, the delay and uncertainty of the start date for the service the buyer seeks to provide, the fact that market value may and probably will change with the passage of time, are among the factors that impair the efficacy of the market and reduce the value of the spectrum in question.

For all of these reasons, Spectrum Market supports the adoption by the Commission of the various forbearance and streamlining practices it has advanced, subject, of course, to the limitations imposed by statute, such as on the Commission's forbearance authority.[4]

B. Extending Secondary Markets Principles to Additional Services

Spectrum Market supports the extension of the Secondary Markets principles to other services to the extent possible consistent with special statutory requirements with respect to certain classes of service. In principle, the public interest is served by uniform application of rules and standards concerning allocation and use of spectrum.

Spectrum Market has considerable experience with the ITFS/MDS services, and in this

[4] *See, e.g., Notice* at 241.

proceeding the Commission raises specific questions as to whether the Commission

> "should extend the policies developed in this docket to leasing involving ITFS and MDS licensees, which have developed with their own approach to excess capacity leasing. Should we offer leasing based on the models used in this docket as an alternative format to the licensees in this service as well? Should the leasing policies adopted in this rulemaking replace the leasing standards that have been developed on a case-by-case basis for ITFS and MDS? How does action in this proceeding fit with the issues being considered in the open rulemaking proposing to evaluate the licensing structure for ITFS and MDS?"[5]

As noted by the Commission, an open rulemaking proceeding involving ITFS and MDS is now in progress,[6] and indeed it is ripe for decision. The almost certain outcome of that proceeding will be a total change in the services, or at least the predominant services, which are provided in the 2.5 GHz band. The wireless cable services which have in the past predominated in that band, and which gave rise to the sui generis leasing policies and practices in that band, will be replaced by low power two-way cellularized largely mobile services. Spectrum Market submits that the idiosyncratic wireless cable practices should be replaced by uniform practices and policies established by the Commission for wireless services in general.

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[5] The Commission also noted that "the record compiled in this proceeding on this issue may be taken into account in WT Docket No. 03-66 as we overhaul the rules and policies generally applicable to ITFS and MDS." *Id.* at 308.

[6] *See* WT Docket 03-66.

Respectfully submitted,

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