

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Promoting Efficient Use of Spectrum Through) WT Docket No. 00-230
the Elimination of Barriers to the Development of)
Secondary Markets)

COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments on the *Further Notice* in this proceeding, which seeks input on additional actions the Commission can take to enhance the development of secondary markets.¹ Following its decision to permit wireless service licensees to lease spectrum,² the Commission is, among other things, considering whether to modify its rules further to improve access to secondary market information and facilitate exchanges and whether to clarify its exclusive licensing policy in order to help facilitate secondary market transactions.

I. The Commission Should Permit the Market to Develop Methods to Access Secondary Market Information and Facilitate Exchanges

The Commission has an important role in facilitating secondary market exchanges: it must ensure that information about licenses and leases is accurate and up-

¹ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-230 (rel. Oct. 6, 2003) (*Secondary Markets Order*) (*Further Notice*).

² *See gen. Secondary Markets Order*.

to-date. The Commission already manages that process with respect to licenses, but with its new rules permitting spectrum leasing, the volume of information about transactions is likely to increase substantially. It is critical that the Commission be prepared to manage the increased inflow of information and make it publicly available on a real-time basis.

It is not necessary, however, for the Commission to collect more detailed information about the lease, such as “the geographic area actually covered and the frequencies actually used.”³ It was for good reason that the Commission chose not to include such a requirement when it adopted its personal communications services (PCS) rules.⁴ Not only would such filings be burdensome, but they would be quickly rendered obsolete, because most CMRS carriers are constantly expanding coverage or increasing capacity within their licensed areas. Moreover, this information would be of little value to potential lessees, for it only indicates what spectrum is currently in use. It would not reflect a licensee’s planned deployment, and thus would not indicate what areas or frequencies are potentially available for lease.

While it is important for the Commission to be sure that there are no regulatory constraints driving the cost of obtaining information about spectrum leases,⁵ it is not the Commission’s role to provide services best provided by the private sector. We agree with the Commission that “the private sector is better suited both to determine what types of information parties might demand and to develop and maintain information on the

³ *Further Notice* at ¶225.

⁴ *See Amendment of the Commission’s Rules to Establish New Personal Communications Services, Second Report and Order*, Gen Docket 90-314, 9 FCC Rcd 4957, 5031 (1994) (“The information that would be submitted on . . . applications [to obtain separate authorizations for each transmitter] is unnecessary to the Commission, and its filing would be overly burdensome for PCS licensees”).

⁵ *Further Notice* at ¶223.

licensed spectrum that might be available for use by third parties.”⁶ There are currently many companies that act as intermediaries between buyers and sellers in the secondary market for license sales. If there is a market for it, there will no doubt be organizations that will seek to take on that role for leasing as well. Furthermore, to the extent that these entities remain third party brokers, or “information intermediaries,” there is no regulatory oversight role for the Commission, unless such intermediaries were to also become spectrum managers, or otherwise hold licenses that would place them under the Commission’s jurisdiction.

II. The Commission Should Encourage the Use of Opportunistic Devices by Clarifying the Rights of “Exclusive Use” Licensees

The *Further Notice* asks: “To facilitate secondary access by opportunistic devices, should the Commission more exhaustively define the nature of the rights embodied in “exclusive use” licenses in the Wireless Radio Service?”⁷ It clearly should. The Commission correctly recognizes the benefits of its exclusive use model of spectrum licensing.⁸ To promote those benefits, it should ensure that licensees have control over

⁶ *Further Notice* at ¶226.

⁷ *Further Notice* at ¶236.

⁸ See, e.g., R. Coase, “The Federal Communications Commission,” 2 *Journal of Law and Economics* 1 (Oct. 1959); A De Vany *et al.*, “A Property System for Market Allocation of the Electromagnetic Spectrum,” 21 *Stan. L. Rev.* 1499 (1969) J. Minasian, “Property Rights in Radiation: An Alternative Approach to Radio Frequency Allocation,” 18 *Journal of Law and Economics* 221 (Apr. 1975); L. De Alessi, “The Economics of Property Rights: A Review of the Evidence,” in 2 *Research in Law and Economics*, ed. R. Zerbe, Jr., 3-12 (1980); D. Webbink, “Radio Licenses and Frequency Spectrum Use Property Rights,” *Communications and the Law* 4 (June 1987); G. Rosston and J. Steinberg, *Using Market-Based Spectrum Policy to Promote the Public Interest* (FCC Staff Paper, Jan. 1997); T. Hazlett, “The Wireless Craze, the Unlimited Bandwidth Myth, the Spectrum Auction *Faux Pas*, and the Punchline to Ronald Coase’s “Big Joke”: An Essay on Airwave Allocation Policy,” 12 *Harv. J.L. & Tech.* 335 (2001).

the use of the spectrum for which they are licensed, including control over so-called “non-interfering” opportunistic devices. Establishing a licensee’s control over its spectrum and strengthening the “exclusive use” model is a critical component of a transition to market-oriented spectrum policies. A functioning market depends fundamentally on a clear definition of underlying spectrum rights. As evidenced by the growth in mobile wireless after the adoption of flexible rules for PCS, one of the best ways to promote the introduction of innovative wireless services, including wide-area mobile and broadband services, is through the use of licensed spectrum that is both flexible and assigned exclusively for use by a given licensee.

The question that the Commission poses is a welcome acknowledgement that, despite other actions focusing on unlicensed use and underlays, the Commission appreciates the value of exclusive licensing. In fact, underlays would create economic disincentives for operators to innovate and invest in advanced technologies that are more spectrally efficient, because they prevent the operator from making the most efficient and effective use of its licensed spectrum.⁹ In effect, if an underlay or easement is not under the licensee’s control, any future increases in a *licensed user’s* efficiency yield benefits for the *unlicensed* users in the band. Damage to existing services can occur both through harmful interference to existing licensees, as well as by skewing a licensee’s economic incentives and restricting the licensee’s ability to use the spectrum to meet market demands. The Commission should rightfully limit any “easements” in exclusive use spectrum to those that are negotiated by the licensee in the secondary market.

⁹ See Reply Comments of Verizon Wireless in *Commission Seeks Public Comment on Spectrum Policy Task Force Report*, FCC Public Notice, 02-322, rel. Nov. 25, 2002; *Spectrum Policy Task Force Report* (ET Docket No. 02-135), rel. Nov. 15, 2002 (“Task Force Report”) (filed Feb. 28, 2003) at 12-15.

Before the Commission moves to a technology-based approach permitting further intrusion in licensed bands, such as unlicensed use of transient “white spaces” in licensed bands, “underlays” and easements,¹⁰ it must clarify the rights and responsibilities of spectrum licensees. This should at a minimum involve a confirmation that the licensee has the right to negotiate rights to use its licensed spectrum, including any opportunistic, “non-interfering” use.

We note, however, that even if the Commission were to go so far as to say that an “exclusive use” licensee actually has the exclusive right to negotiate agreements to offer easements or underlays to its spectrum, it would be difficult under the recently adopted leasing rules to define the terms of that transaction. Unlike a more conventional lease contemplated under the rules, a lease to permit opportunistic use of a licensee’s spectrum cannot define the leased spectrum in terms of a specific frequency, geography or even time. The rules require, however, that the lessor and lessee define and report to the Commission both the geography and the frequencies that will be used. “Smart” or “opportunistic” technologies are agile and operate in geography or frequencies where spectrum is “unused” and by definition, “unused” mobile spectrum varies over time by location and frequency. To the extent a CMRS licensee wishes to lease its spectrum white spaces, it could not provide a static definition of the confines of a lease. In order to encourage this kind of arrangement between CMRS licensees and users of such devices, the Commission should consider revising its rules to permit more dynamic definitions of leased spectrum in some situations.

¹⁰ See e.g., *Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, ET Docket No. 03-237 (rel. Nov. 28, 2003).

III. Conclusion

Verizon Wireless urges the Commission to focus on keeping accurate and up-to-date license and leasing information and permit the market to develop methods to access secondary market information and facilitate exchanges. Furthermore, Verizon Wireless believes that the Commission can encourage the use of opportunistic devices by clarifying the rights of “exclusive use” licensees, and urges that it address exclusive licensing now, before it takes up newer issues as to underlays.

Respectfully submitted,

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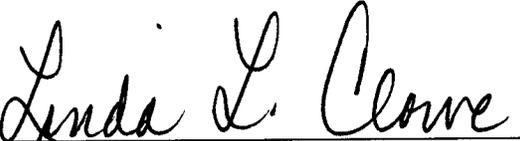
December 5, 2003

Certificate of Service

I hereby certify that on this 5th day of December 2003 copies of the foregoing
"Comments of Verizon Wireless" in WT Docket 00-230 were sent electronically to the
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