

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 THE  
PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION**

PCIA, The Wireless Infrastructure Association (“PCIA”), herewith submits its comments in response to the Further Notice of Proposed Rulemaking in the above-captioned docket (“*Further Notice*”).<sup>1</sup> PCIA commends the FCC for its adoption of progressive, market-based policies regarding spectrum use and believes that such policies hold the promise of both more efficient spectrum use and broader access to spectrum resources by end users. PCIA, with its unique position as an FCC-certified frequency coordinator, System Identification Number (“SID”) administrator, and the manager of the Microwave Clearinghouse, a private, non-profit entity charged with identifying cost-sharing obligations arising from microwave relocation in the personal communications

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<sup>1</sup> Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, FCC 03-113, WT Docket No. 00-230 (released Oct. 7, 2003). PCIA requests a waiver of the filing deadline to permit the filing of these initial comments. PCIA's comments were timely prepared, but were unable to be filed due to administrative issues caused by the inclement weather. Given the filing date, the *ex parte* unrestricted nature of the proceeding, and the timing of reply comments, no prejudice to other parties will occur by grant of the waiver.

service (“PCS”) bands, is uniquely situated to address the efficacy of industry solutions to market needs created by FCC action. As discussed herein, PCIA believes the FCC will maximize the potential benefits of its new economically-based policies by allowing market forces to dictate the creation of exchanges and other secondary markets mechanisms for improving access to spectrum. The FCC will allow the most rapid and efficient development of secondary spectrum markets by setting clear regulations for secondary market use, by minimizing—to the extent possible—transaction costs, and by allowing the free market to create specialized solutions where necessary.

PCIA has been a long time advocate of regulatory policies based on economic principles and allowing market forces to influence and dictate the efficient distribution and use of spectrum. Indeed, PCIA, through NABER, a predecessor-in-interest, was one of the first—and remains one of the preeminent—FCC-certified frequency coordinators for the mobile communications industry and private users. Because frequency coordinators are a private industry-created mechanism for administration of spectrum use in certain shared bands, the success of PCIA’s frequency coordination operations is a longstanding testament to the efficiency and effectiveness of market-based policies. Key to the success of the frequency coordinators was a clearly defined set of usage rules for licensees that could be applied by frequency coordinators in conjunction with policies that permitted frequency coordinators to compete without imposing unnecessary transaction costs on the industry.

PCIA’s Microwave Clearinghouse (“MWCH”) is another example of the success the Commission can achieve by setting clear ground rules for competition and then allowing industry needs and market forces to dictate the provision of needed services. In

the case of the MWCH, the FCC created rules that defined when PCS licensees were required to share in the costs of relocating microwave links and permitted private industry to create a mechanism for identifying those obligations and notifying affected parties. The MWCH's success can be easily measured by reference to the 3,000 microwave paths registered with the clearinghouse, the 200,000 base station prior coordination notifications ("PCNs") filed, and the \$350 million in cost-sharing obligations identified—all with minimal oversight and negligible intervention by the FCC—as well as the fact that administrations from Australia, Canada, France, Taiwan, and Japan have studied the MWCH operation so that they might establish similar processes in their countries.

Thus, PCIA is a strong proponent of allowing market forces to respond appropriately to industry needs created by FCC policies. PCIA's latest venture, as a SID administrator, is still new, but PCIA believes that the wisdom of allowing private administration of such resources will be borne out with the passage of time. And, as discussed below, PCIA believes the empirical success of industry created market makers, such as frequency coordinators and the microwave clearinghouse, should serve as a guide for actions in response to the *Further Notice*.

As an initial matter, the *Further Notice* requests comment on whether regulatory mechanisms should be invoked to promote access to information allowing potential spectrum users to identify compatible spectrum holders.<sup>2</sup> In this regard, the *Further Notice* notes that the Universal Licensing System ("ULS") database might make available certain information of use to those seeking to acquire spectrum lease rights.<sup>3</sup> Plainly, if

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<sup>2</sup> *Further Notice* at ¶218.

<sup>3</sup> *Id.*

the FCC is required to accumulate information in pursuit of its statutory obligations as a regulator, it should make that information readily available to the public as a resource. However, the *Further Notice* also goes further to inquire as to whether the FCC should “collect additional information from licensees, spectrum lessees, or any other authorized users about the nature of their operations (e.g., more detail about the geographic area actually covered and the frequencies actually used)” and whether “the collection of more detailed operational information [would] be burdensome for affected parties.”<sup>4</sup> As much as PCIA believes it is beneficial to make available information *required* of licensees, PCIA believes it is inefficient and inadvisable for the FCC to expand information collection requirements for the sake of stimulating secondary markets. To the extent that an industry need for an information service relevant to secondary markets arises, market forces dictate that a vehicle for providing that information will be created, and be narrowly tailored to efficiently process and distribute that information. Quite simply, there is no demonstrated need for the FCC to create additional information collection requirements, and the creation of such procedures in the absence of a documented market failure can only create artificial barriers to competition by increasing the burdens—and transaction costs—associated with spectrum leasing.

As the Commission itself has observed, “the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that might be available for use by third parties.”<sup>5</sup>

Nonetheless, the *Further Notice* asks whether “on the likelihood that private sector

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<sup>4</sup> *Further Notice* at ¶225.

<sup>5</sup> *Further Notice* at ¶226 (citing Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking, 15 FCC Rcd 24203 (2000) (NPRM) at ¶100).

mechanisms will develop for the collection and dissemination of secondary market information.” PCIA believes, based on the documented industry response to the challenges of frequency coordination and microwave relocation cost-sharing, that such mechanisms will be created if the efficiency of the market for secondary uses is hampered by a lack of information, and that such industry-originated responses will be far more efficient and tailored to meet market needs without the imposition of unnecessary transaction costs. Market makers and exchanges, similarly, will arise if demand exists, and regulatory actions to encourage, discourage, or influence the creation of such entities can only distort the market forces surrounding the implementation and use of such organizations. Nor, given the FCC’s review of the actual leasing process between two entities, does there appear to be any need for the Commission to regulate directly, certify, or sanction any privately created services to match spectrum users and spectrum licensees.<sup>6</sup>

In lieu of devoting resources to the creation of information or spectrum exchanges, which PCIA believes will arise if a demonstrated need exists, PCIA believes the Commission should concentrate its efforts on continuing to eliminate unnecessary regulations and procedures that constrain secondary markets. PCIA concurs with the suggestion in the *Further Notice*, for example, to utilize forbearance to eliminate prior consent requirements for as broad a class of leases as possible.<sup>7</sup> Similarly, the *Further Notice* proposal to extend secondary markets policies to a wider range of services should

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<sup>6</sup> *Further Notice* at ¶¶123, 150 & 181. The Commission should, however, continue to monitor the development of such mechanisms and be prepared to intervene in the event that a demonstrable market failure exists.

<sup>7</sup> *Further Notice* at ¶¶237-240.

be adopted.<sup>8</sup> While PCIA recognizes that there are necessary statutory limits to the FCC's ability to fully realize a secondary market in spectrum absent regulatory oversight, the Commission should to the greatest possible degree minimize the impact of such requirements on those seeking to more efficiently use, or to gain access to, spectrum resources.

PCIA commends the FCC for its effort to craft an environment where market forces can flourish and access to spectrum is facilitated through private transactions. PCIA urges the FCC to now allow the market created by the policies adopted in the Report and Order to develop naturally. The FCC should not distort the development of robust and competitive industry mechanisms through the imposition of additional data collection procedures, with attendant burdens and transaction costs, or through the

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<sup>8</sup> *Further Notice* at ¶¶289.

creation of incentives that encourage inefficient practices. PCIA believes that the land mobile communications industry, and the public at large, will be best served by allowing the future direction of secondary markets to be shaped by competitive forces.

Respectfully submitted,

PCIA, THE WIRELESS INFRASTRUCTURE  
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