

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

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

PETITION FOR RECONSIDERATION

First Avenue Networks, Inc. (“First Avenue”)¹ respectfully submits this Petition for Reconsideration of the Federal Communications Commission’s (“FCC” or “Commission”) *Report and Order* in the above captioned proceeding.² Although First Avenue commends the Commission for its decision to encourage spectrum efficiency through the promotion of secondary markets, First Avenue requests that the Commission reconsider the lease notification requirements for “spectrum manager” leasing. The leasing requirements established by the *Report and Order* undermine the flexibility granted to spectrum managers. Furthermore, pre-operation notification is not necessary to ensure compliance with the Commission’s spectrum leasing rules. Alternatively, the Commission should require notification of a leasing agreement when the lessee commences operations.

I. THE “SPECTRUM MANAGER” LEASING NOTIFICATION REQUIREMENT

In this proceeding, the Commission established two options for spectrum leasing: “spectrum manager” and *de facto* transfer leasing. This two-prong approach to spectrum leasing was adopted

¹ First Avenue is the successor company to Advanced Radio Telecom and is the holder of the nation’s most expansive 39 GHz license portfolio. It leases this spectrum to carriers, wholesale bandwidth providers, and end users. After a lease agreement is entered into with First Avenue, 39 GHz fixed wireless broadband connections can be operable within as few as three days.

² *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Deployment of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) (“*Report and Order*”). This *Report and Order* was published in the Federal Register on November 25, 2003. See 68 Fed. Reg. 66,232 (Nov. 25, 2003).

to provide licensees with maximum flexibility while ensuring that the Commission’s core public interest objectives are met.³ Specifically, the Commission noted that “[t]hese flexible policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resource to the ultimate benefit of consumers throughout the country.”⁴

Under the “spectrum manager” leasing option, licensees and spectrum lessees may enter into leasing arrangements for any amount of spectrum, in any geographic area, and for any period of time within the scope and term of the license without prior FCC approval so long as the licensee retains *de jure* control of the license and *de facto* control over the leased spectrum.⁵ The Commission, however, also adopted a requirement that licensees report leases to the Commission within 14 days of execution and at least 21 days in advance of operation.⁶ These reports would be placed on a weekly informational public notice, unless the license involved is not subject to the prior public notice requirements of Section 1.933 of the Commission’s rules.⁷ The only justification the Commission provides for this advanced notice requirement is that it will allow the Commission and the public some opportunity to review the leasing arrangement prior to operation.⁸ Additionally, the Commission retained the ability to investigate and terminate a spectrum leasing arrangement at any time post-notification to the extent it determines that the arrangement constitutes

³ *Report and Order*, ¶ 4.

⁴ *Id.* ¶ 2.

⁵ *Id.* ¶ 12.

⁶ *Id.* ¶ 124. For spectrum manager leasing arrangements of one year or less, licensees must provide notice of the arrangement at least ten days in advance of operation. *Id.* This related provision for shorter leases implicates the same policy issues addressed in this *Petition*.

⁷ *Id.*

⁸ *Id.*

an unauthorized transfer of *de facto* control or raises foreign ownership, competitive, or other public interest concerns.⁹

II. THE TWENTY-ONE DAY PRE-OPERATION NOTIFICATION REQUIREMENT UNDERMINES THE FLEXIBILITY GRANTED TO SPECTRUM MANAGERS

In both the *Notice of Proposed Rulemaking* and the *Report and Order* in this proceeding, the Commission emphasized its desire to establish flexible policies that will promote spectrum efficiency and the full utilization of Commission-licensed spectrum.¹⁰ The Commission achieved its goal by not requiring prior approval of certain leases, provided the licensee retains *de facto* and *de jure* control. It undermined the achievement of this goal, however, by requiring pre-operation notification of all “spectrum manager” leasing arrangements. This pre-operation notification is equivalent to prior approval.

The benefit of “spectrum manager” leasing is that “spectrum managers” may respond immediately to market demands for spectrum. For example, First Avenue is capable of having wireless broadband connections operational within three days of the formation of a leasing arrangement. The twenty-one day waiting period, therefore, severely limits First Avenue’s ability to respond quickly to immediate spectrum needs, thereby decreasing spectrum efficiency. Such a result is contrary to the Commission’s stated goals in establishing secondary markets.

III. NOTIFICATION OF A LEASING ARRANGEMENT CONCURRENT WITH THE COMMENCEMENT OF OPERATIONS IS SUFFICIENT TO ENSURE COMPLIANCE WITH THE COMMISSION’S SPECTRUM LEASING RULES

In the *Report and Order*, the Commission justified the imposition of pre-operation notification on the need to review leasing arrangements prior to operation.¹¹ The Commission,

⁹ *Id.* ¶ 125.

¹⁰ *Id.* ¶¶ 1-2; *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, 15 FCC Rcd 24203, ¶ 2 (2000).

¹¹ *Report and Order*, ¶ 124.

