

**Before the
Federal Communications Commission
Washington, DC 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

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, LLC

Winstar Communications, LLC

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January 5, 2004

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On behalf of Winstar Communications, LLC (hereinafter “Winstar”) please find its comments to the Further Notice of Proposed Rulemaking¹ (“FNPRM”) in the above-referenced proceeding.

I. Introduction

Winstar provides terrestrial-based, predominately fixed, broadband communications using the area-wide licensed 38.6-40.0 GHz (“39 GHz”) and Local Multipoint Distribution Service (“LMDS” or “28 GHz and 31 GHz”) bands. The Winstar area-wide licenses cover the entire country, Alaska, Hawaii and the lower 48 states. Winstar also utilizes the point-to-point licensed microwave bands (including, but not limited to, 6 GHz, 10 GHz, 18 GHz and 23 GHz).

Winstar agrees with the Federal Communications Commission (“FCC” or “Commission”) that encouraging broadband development, promoting competition and enhancing economic opportunities are important and attainable goals of this proceeding.² In that spirit, Winstar takes this opportunity to comment on several portions of the instant proceeding.

II. Comments

- A. The Commission Should Forbear From Requiring Prior Approval for De Facto Leases

Winstar agrees with the majority of commenters that the Commission should forbear from requiring prior FCC approval for de facto lease types. As the Commission proposes in the

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

² *See id.* at para. 2.

FNPRM, notification to the FCC within 14 days of the lease execution will promote flexibility while providing the Commission with the information necessary to evaluate parties' eligibility.³

B. The Commission Should Allow Third-Party “Clearinghouses” and “Market Makers” to Develop

Winstar would like to take this opportunity to reiterate that the Commission should allow third party, private clearinghouses and market makers to develop. A majority of the commenters also made this comment. Winstar disagrees with the proposal that the Commission should select or designate a third-party entity to serve that purpose. Rather, the Commission should focus on allowing the market to function absent a third-party intermediary.

C. Smart Radio Technology

Winstar agrees with the other commenters that expressed concern about the possibility of smart radio technology “squatting” on licensed spectrum. Winstar believes that the Commission should complete its Smart Radio proceeding⁴ prior to determining exactly how this technology may affect secondary spectrum markets, and certainly prior to considering any non-licenseholder to use any of the bands approved or considered for leasing under the Secondary Markets Order.

³ See *id.* at para 246.

⁴ See *In re* Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies; Authorization and Use of Software Defined Radios, *Notice of Proposed Rule Making*, ET Docket No. 03-108 (2003).

III. Conclusion

Winstar appreciates the Commission's work in the Secondary Spectrum Market arena. Winstar asks the Commission to consider these comments and encourages it to act within the proceeding's deadline and move swiftly ahead with implementing the new rules.

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