Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF SALMON PCS, LLC IN SUPPORT OF THE PETITION FOR RECONSIDERATION AND CLARIFICATION OF CINGULAR WIRELESS LLC

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February 9, 2004

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Summary

Salmon PCS, LLC ("Salmon") is filing comments in support of the Petition for Reconsideration and Clarification submitted by Cingular Wireless LLC with reference to the *Spectrum Leasing Order*. Salmon wholeheartedly agrees with Cingular that changes in the current spectrum leasing rules and policies are needed in order for designated entities ("DEs") to be able to benefit from the elimination of barriers to the development of secondary markets.

The *Spectrum Leasing Order* purports to create leasing opportunities for DEs, but contains a "Catch 22:" the Commission's retention of the strict facilities-based *de facto* control criteria from the *Intermountain Microwave* case for the purpose of assessing DE eligibility. As a result, a designated entity could not enter into a commercially reasonable spectrum manager lease with a non-eligible without risking a finding that the DE had ceded an impermissible degree of day-to-day control over the underlying network facilities. Informal discussions with the staff of the Wireless Telecommunications Bureau have confirmed that the risks of DE leasing perceived by Salmon are very real, absent rule changes.

Section 309(j) of the Communications Act of 1934, as amended, obligates the Commission to make efforts to permit DEs to participate meaningfully in the provision of spectrum-based services. Spectrum leasing certainly qualifies as spectrum-based service and should be promoted for DEs. Since DEs often have limited access to capital, the prospect of being a lessor of spectrum - - which is less capital intensive than constructing

and operating network facilities - - could be particularly interesting to designated entity licensees.

The solution is for the Commission to move away from the outdated *Intermountain Microwave de facto* control criteria for all purposes. Alternatively, the Commission should make clear that the *Intermountain Microwave* standard will only be used to confirm that the DE-licensee has maintained sufficient day-to-day control over the spectrum leasing business, rather than looking to control over the underlying facilities. Finally, the Commission must make clear that a *bona fide* spectrum manager lease will not be deemed to create an affiliation between a DE lessor and a non-eligible lessee.

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

To: The Commission

REPLY COMMENTS OF SALMON PCS, LLC IN SUPPORT OF THE PETITION FOR RECONSIDERATION AND CLARIFICATION OF CINGULAR WIRELESS LLC

Salmon PCS, LLC ("Salmon"), by its attorneys, hereby submits comments in response to and in support of the Petition for Reconsideration and Clarification (the "Petition") filed by Cingular Wireless LLC ("Cingular") on December 29, 2003 in the above-captioned proceeding.[1] In the Petition, Cingular states that the Commission should reconsider portions of its *Report and Order* issued in this proceeding[2] in order to ensure that its secondary market policies are fully available to any licensee that qualifies as a designated entity ("DE"). As a licensed DE,[3] Salmon wholeheartedly supports

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[1] *Cingular Wireless LLC Petition For Reconsideration and Clarification*, WT Docket No. 00-230 (filed December 29, 2003) ("Cingular Petition").

[2] *Report and Order and Further Notice of Proposed Rulemaking* (WT Docket No. 00-230), FCC 03-113 (rel. October 6, 2003) (the "*Spectrum Leasing Order*").

[3] "Designated entities" are companies that qualify as small businesses, rural telephone companies, or companies which are controlled by women or minorities. 47 C.F.R.

(continued...)

Cingular's Petition. As Salmon earlier indicated in comments filed in response to the *Further Notice of Proposed Rulemaking* (the "Further Notice") in this proceeding,[4] additional Commission action is needed to accord DEs a meaningful opportunity to take advantage of the new spectrum leasing rules.

I. BACKGROUND

In the *Spectrum Leasing Order*, the Commission found that:

> providing the widest array of interested parties, *including designated entities* and others that face regulatory and market barriers ... increased opportunities to enter into a variety of spectrum leasing arrangements . . . will significantly advance our goal of promoting facilities-based competition in broadband and other communications services as well as our objective to ensure more efficient, intensive, and innovative uses of spectrum.[5]

Unfortunately, the *Spectrum Leasing Order* fails to go far enough to achieve the worthy goal of providing DEs with the flexibility they need to benefit from the elimination of barriers to the development of secondary markets.

As noted in Cingular's Petition,[6] the Commission articulated in its *Spectrum Leasing Order* a policy intended to enable spectrum licensees and non-licensees (including DEs) to take advantage of the benefits of spectrum leasing. To this end, the Commission's *Spectrum Leasing Order* contained new secondary market rules designed

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(...continued)

§1.2110. The designation derives from Section 309(j)(3) and (4) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. § §309(j)(3) and (4).

[4] *Comments of Salmon PCS, LLC on the Further Notice of Proposed Rulemaking*, WT Docket No. 00-230 (filed December 5, 2003).

[5] *Spectrum Leasing Order* at ¶39 (emphasis supplied).

[6] Petition at 1.

to provide greater flexibility in the types of spectrum leases into which licensees may enter. DE licensees could benefit greatly from the opportunity to enter into spectrum leases because of the challenges they face in obtaining the funds necessary to compete in the capital-intensive telecommunications market. Obviously, the start-up funds needed to operate a spectrum leasing business are much less than those needed to construct and operate a competitive, commercially-viable communications network. This means that the prospect of being a spectrum lessor may be particularly interesting and financially attractive to a DE.

The primary component of the Commission's efforts to provide increased flexibility to licensees is the relaxation of the criteria used for determining *de facto* control under a spectrum lease. In particular, the Commission's *Spectrum Leasing Order* moves away from the rigid, facilities-based *de facto* control criteria set forth in the 1963 *Intermountain Microwave* decision[7] toward a more flexible standard codified in new Section 1.9010 of the FCC rules.[8] The Commission's expressly stated objective was to adopt a standard that accords lessors and lessees the flexibility necessary for them to craft workable business arrangements to lease spectrum.[9] In comparing the new *de facto* control standard to the *Intermountain Microwave* criteria, the following distinctions can be found:

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[7] *Intermountain Microwave*, 24 R.R. 983 (1963).

[8] 47 C.F.R. § 1.9010.

[9] *Spectrum Leasing Order*, ¶ 51.

- The *Intermountain Microwave* standard obligated the licensee to have unfettered use of all station facilities and equipment; the new standard obligates the licensee to have a right to inspect the lessee's operations;

- *Intermountain Microwave* obligated the licensee to control the daily operations; the new standard obligates the licensee to maintain a reasonable degree of actual working knowledge about the spectrum lessee's activities and facilities;

- The *Intermountain Microwave* standard obligated the licensee to carry out all key policy decisions; the new standard obligates the licensee to oversee policy decisions related to compliance with technical rules (*e.g.*, interference protection), licensing requirements (*e.g.*, environmental rules, FAA requirements, frequency coordination, etc.) and safety regulations (*e.g.*, rf exposure limits);

- The *Intermountain Microwave* standard obligated the licensee to prepare and file all applications with the Commission; the new policy retains this requirement but recognizes the right of the licensee to use agents (*e.g.* attorneys, engineering consultants) in carrying out these responsibilities;

- The *Intermountain Microwave* standard obligated the licensee to control the employment, supervision, and dismissal of personnel; the new standard makes no mention of this criterion; and

- The *Intermountain Microwave* standard obligated the licensee to remain ultimately responsible for the payment of expenses arising out of the operation of the facilities, and to receive monies and profits from the operations of the facilities; the new standard makes no mention of these criteria.

The newly-stated criteria are designed to be narrower, clearer and less onerous than the prior *Intermountain Microwave* tests in order to enable licensees to fashion commercially useful spectrum lease arrangements.

II. RULINGS IN THE *SPECTRUM LEASING ORDER* UNDULY RESTRICT THE ABILITY OF DESIGNATED ENTITY LICENSEES TO LEASE SPECTRUM TO OTHERS

While the Commission's relaxation of its *de facto* control criteria is a welcome development for licensees wishing to engage in spectrum leasing, there are aspects of the *Spectrum Leasing Order* and the accompanying rules that limit the realistic ability of DEs to take advantage of the new flexibility. In particular, despite the fact that the rules expressly contemplate that DEs may be spectrum lessors, the practical reality is that the rules contain a "catch-22" that would cause DEs to risk losing their eligibility if they entered into a *bona fide* lease with a non-eligible.

Specifically, the *Spectrum Leasing Order* states that the Commission is "limiting application of our newly adopted *de facto* control standard to the leasing context,"[10] leaving the stricter, facilities-based *Intermountain Microwave* control standard in place to evaluate the existence of *de facto* control over a licensee in other contexts, such as the case of designated entity and entrepreneur eligibility and management agreements.[11] As Cingular points out, the *Spectrum Leasing Order* indicates that the "*de facto* standard in [the Commission's] rules" for DEs will trump the "revised *de facto* control standard" in the event of a conflict between the two standards.[12] Consequently, DEs cannot delegate the normal degree of day-to-day responsibility over network facilities that a prospectee

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[10] *Spectrum Leasing Order*, ¶ 315.

[11] *See Spectrum Leasing Order*, ¶ 315; 47 C.F.R. § 1.9020(d)(4).

[12] Cingular Petition at 4.

lessee would want without risking a finding that the licensee had relinquished control, thereby jeopardizing the DE's eligibility.[13]

A DE entering into a spectrum manager lease also runs the risk of having a lessee be deemed a non-eligible "controlling interest" of the DE, with that determination being made using the stricter *Intermountain Microwave de facto* control standard. Consequently, it would be extremely difficult for a DE licensee to relinquish certain responsibilities over the day-to-day operations of facilities that are fundamental to a viable leasing arrangement to a non-DE lessee under a spectrum manager lease without risking an adverse finding that the lessee had become a "controlling interest." A resulting loss of DE status could bring dire consequences for a licensee.

III. MEETINGS WITH FCC STAFF HAVE CONFIRMED THE LIMITATIONS FOR DEs IN THE CURRENT RULES

Because Salmon is interested in exploring the possibility of becoming a spectrum lessor, but has no interest in jeopardizing its very small business status, it has pursued informal discussions with the staff of the FCC's Wireless Telecommunications Bureau in order to fully understand the leasing rules as applied to DEs. At a meeting on January 7, 2004, with many of the FCC experts on the *Spectrum Leasing Order*, Salmon and Cingular presented the framework of a potential spectrum manager leasing arrangement between the two companies in order to get input from Commission staff on whether the proposed arrangement complied with the new rules.[14] In the proposed arrangement,

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[13] Cingular Petition at 4.

[14] The *Ex Parte* Notice filed in this proceeding with regard to this meeting is attached hereto as Exhibit A.

Salmon - - along with its DE-eligible controlling interest-holder Crowley Digital Wireless, LLC ("Crowley Digital") - - would have retained: (a) *de jure* and *de facto* control over both the licensee entity and over the spectrum leasing business under the *Intermountain Microwave de facto* control test; and, (b) *de facto* control over the underlying facilities and the spectrum in accordance with the *Spectrum Leasing Order's* new control criteria. Ownership and control of Salmon would have remained unchanged, with DE-eligible Crowley Digital continuing to control Salmon's management committee and key officer positions. Salmon would have retained responsibility for regulatory compliance and would be kept informed of all license-related activities via a reporting requirement imposed on Cingular. Salmon also would have retained rights of inspection and the right to modify or suspend operations in accordance with applicable legal requirements. Cingular would have leased substantially all of Salmon's spectrum capacity and assumed responsibility for the design and construction of facilities. And, Salmon planned to rely on the facilities constructed by Cingular to meet build-out requirements.

After considering this proposal, Commission staff unequivocally indicated to Salmon and Cingular that such an arrangement would not be allowed under the *Spectrum Leasing Order* unless changes were made on reconsideration or the rules were changed pursuant to the *Further Notice*. Salmon was advised that entering into a spectrum lease with another eligible DE would be feasible,[15] but that a spectrum manager lease with a

[15] Salmon knows of no qualified DEs who are actively seeking to be lessees of spectrum in the Salmon markets.

non-eligible such as Cingular presented difficult issues and significant risks as long as the *Intermountain Microwave* criteria were in effect. As a consequence, Salmon and Cingular have abandoned their effort to pursue a spectrum lease unless and until the applicable rules are revised, either on reconsideration or pursuant to the *Further Notice.*

IV. THE COMMISSION SHOULD RULE THAT ITS SECONDARY MARKET POLICIES ARE FULLY AVAILABLE TO DESIGNATED ENTITIES

Salmon agrees with Cingular that the Commission should revise the *Spectrum Leasing Order* in order to make clear that the Commission's secondary market policies are fully available to DEs such as Salmon.[16] In particular, Cingular asked the Commission to make it clear that the *Intermountain Microwave de facto* control standard trumps the application of the new, relaxed *de facto* control standard only with regard to a DE's continued eligibility for DE status, not DE control over a spectrum lessee's operations.[17] Cingular also urged the Commission to clarify that its statement that lessees are required to "satisfy the eligibility and qualification requirements that are applicable to licensees under their license authorization" refers only to general eligibility requirements and not DE eligibility rules.[18]

Salmon resoundingly agrees that the Commission should modify or clarify its *Spectrum Leasing Order* to ensure the availability to DEs of the spectrum manager

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[16] The Cingular Petition asks for clarification, but the input received from Salmon in response to its spectrum leasing proposal indicates that a modification or reconsideration of the *Spectrum Leasing Order* is required.

[17] Cingular Petition at 4.

[18] Cingular Petition at 4.

leasing option discussed in the *Order*. A variety of changes are needed in order to accomplish this objective.

A. The *Intermountain Microwave* Test Has Outlived Its Usefulness

The Commission should reconsider portions of its *Spectrum Leasing Order* and abandon the *Intermountain Microwave* test for all purposes. Abandoning the outdated standard would accord DEs the same flexibility that will be enjoyed by other licensees when pursuing spectrum leasing and other secondary market transactions. Cingular, in its Petition, urged the Commission to follow its new *de facto* control standard instead of the *Intermountain Microwave* standard not only in the spectrum leasing context, but also with respect to satisfying the DE eligibility criteria.[19] This Cingular position should be adopted.

The *Spectrum Leasing Order* correctly finds that the facilities-based *Intermountain Microwave* test is "outdated"[20] and "is increasingly out of step with the flexible spectrum use policies [the Commission is] adopting in the Wireless Radio Services and that [the Commission] consider[s] essential to further its obligations to promote the public interest in today's environment.[21] What the *Spectrum Leasing Order* fails to recognize is that the *Intermountain Microwave* criteria also are out of step with an enlightened DE program. Section 309(j)(3) of the Communications Act, obligates the Commission to strive to adopt spectrum policies that create meaningful economic

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[19] Cingular Petition at 4, fn 12.

[20] *Spectrum Leasing Order,* ¶ 51.

[21] Id. at ¶ 62

opportunities for DEs.[22] The statutory mandate requires the Commission to "ensure that [designated entities, including small businesses] are given the opportunity to participate in the provision of spectrum-based services."[23] Spectrum leasing certainly is a legitimate "spectrum-based service" and, as a consequence, it is incumbent upon the Commission to adopt rules and policies that enable DEs to participate in this service. Instead, the Commission has retained the restrictive, facilities-based *de facto* control test for DE leasing arrangements, thereby eliminating any practical benefit of a spectrum lease. The core element of flexibility that the leasing rules are intended to provide is to allow the lessee to assume primary responsibility for the design and day-to-day operation of the facilities that are used to operate on the spectrum. Requiring a DE-lessor to maintain *de facto* control over the underlying facilities eliminates the benefit of a spectrum lease. The Commission should, therefore, reconsider its decision to retain the *Intermountain Microwave* criteria for DE control purposes and apply the updated *de facto* control standard specified in Section 1.9010 of the FCC rules for all purposes.

In the alternative, the Commission could retain the *Intermountain Microwave* test provided that it makes clear that the control criteria will only be applied to confirm that the DE has retained day-to-day control over the spectrum leasing business, not the underlying network facilities. Thus, a DE-lessor would be obligated to have: (1) unfettered use and access of the premises used to run the leasing business; (2) day-to-day control over the leasing operations; (3) responsibility for setting and carrying out key

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[22] 47 U.S.C. § 309(j)(3).

[23] 47 U.S.C. § 309(j)(4)(D).

leasing policy decisions; (4) direct responsibility for filing any FCC applications pertaining to the leased spectrum; (5) control over the employment, supervision and dismissal of personnel in the leasing business; and, (6) the obligation to pay expenses, and to receive monies and profits, associated with the leasing activities. The DE would not be required to micro-manage the construction and operation of the lessee's network facilities that are operating on the leased spectrum, but rather would have in place reporting and inspection rights that would enable the licensee to assure that all applicable rules and regulations were being met by the subject facilities.

B. *Bona Fide* Spectrum Manager Leases Should Not Be Construed To Create Affiliations

The Commission also must specifically amend the appropriate sections of its affiliate rule to make it clear that *bona fide* lessee/lessor relationships -- in which the licensee lessor maintains the requisite responsibility for FCC rule compliance and the interactions with the Commission -- shall not be deemed to create an affiliation under any subsection of Section 1.2110(c)(5) of its rules. Currently, the rules for determining affiliation under the DE and entrepreneur policies largely incorporate the *Intermountain Microwave de facto* control test.[24] The broad definition of "affiliate" encompasses situations in which two entities have an "identity of interest",[25] "common investments",[26]

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[24] *FNPRM*, ¶ 317. *See also* the new FCC rule codified at 47 C.F.R. § 1.9020(d)(4).

[25] *See* 47 C.F.R. § 1.2110(c)(5)(D).

[26] *See* 47 C.F.R. § 1.2110(c)(5)(iii), which provides: "Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common

(continued...)

"common facilities",[27] and/or significant "contractual relationships."[28] Absent clarification, the breadth of these affiliation rules is problematic in the spectrum leasing context, particularly if a DE licensee will be relying upon a non-DE lessee's construction of facilities for purposes of meeting build-out requirements and plans to lease all or most of its spectrum to that single non-DE operator via a spectrum manager lease. As a consequence, on reconsideration the Commission should make it clear that a *bona fide* spectrum manager lease that meets the applicable oversight and control criteria will not be deemed to create an affiliation for DE purposes.

C. The Public Interest Will Be Served by Making The Changes Requested by Cingular and Salmon

Salmon provides a prime example of the need for the Commission to adopt flexible policies that will enable licensees and other service providers to adapt to dynamic and often unforeseen market forces. In Salmon's case, there is a dramatic difference between the business plan that would make sense if it were initiating service in 77 markets (as originally envisioned when Salmon successfully bid on 79 licenses in 77

(...continued)

investments. In determining if the applicant controls or has the power to control a concern, persons with an identity will be treated as though they were one person."

[27] *See* 47 C.F.R. § 1.2110(c)(5)(viii), which provides: "Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern."

[28] *See* 47 C.F.R. § 1.2110(c)(5)(ix), which provides: "Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern."

markets in broadband PCS spectrum Auction No. 35) – covering a population of nearly 80 million people across the entire U.S. -- and the plan that makes commercial sense now that Salmon is instead implementing service in 45 smaller geographically dispersed markets containing less than 12 million in population (as a result of being unable to obtain numerous licenses due to the Commission's litigation over the licenses held by NextWave Personal Communications, Inc., its affiliates, and Urban Comm North Carolina, Inc.). Because Salmon is only licensed to establish service in a much smaller footprint than originally envisioned, the spectrum lease alternative is a more commercially viable means to put spectrum to beneficial use in those dispersed markets. Adapting to unexpected changes of this nature is particularly challenging for a very small business DE which must rely heavily on borrowed funds to finance the construction of capital intensive communications networks.

If the Commission moves away from the *Intermountain Microwave de facto* control criteria and makes clear that *bona fide* spectrum leasing arrangements do not create an affiliation under its rules, DEs such as Salmon will be free to take full advantage of the flexibility provided by the Commission's new rules to obtain capital by participating in spectrum leasing and other secondary market transactions. Such flexibility can be critical to the success of DEs, which face challenges in obtaining capital necessary to compete in today's telecommunications market.

WHEREFORE, the foregoing premises having been duly considered, Salmon respectfully requests that the Commission grant Cingular's Petition for Reconsideration and Clarification and abandon the *Intermountain Microwave de facto* control standard for

all DE purposes and make the aforementioned changes in the DE affiliation rules in order to permit DEs to enjoy the same flexibility as other licensees in crafting leasing and other secondary market arrangements.

Respectfully submitted,

SALMON PCS, LLC

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Attachment A

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January 7, 2004

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RECEIVED
JAN - 7 2004
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Notice
Docket No. 00-230
(Secondary Markets)

Dear Ms. Dortch:

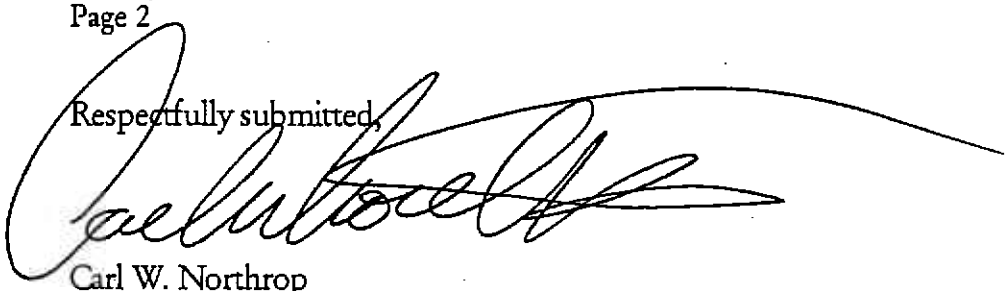
On January 7, 2004, the undersigned representatives of Salmon PCS, LLC ("Salmon") were joined by Andrew Tollin and Brian Fontes, representatives of Cingular Wireless, LLC ("Cingular"), in a meeting with the Commission personnel listed in the cc: portion of this letter. The purpose of the meeting was to discuss a possible spectrum manager leasing arrangement that Salmon and Cingular are considering and on which they are seeking staff input. Attached is a detailed outline of the topics discussed, copies of which were distributed at the meeting.

The parties did not make any detailed presentation relating to the issues that are pending in the secondary markets proceeding (WT Docket No. 00-230) on reconsideration or pursuant to the *Further Notice of Proposed Rulemaking*.[1] Nonetheless, because of the possible relationship of the issues discussed with matters that may be under consideration in the ongoing rulemaking proceeding, the parties are filing this notice out of an abundance of caution.

Kindly refer any questions in connection with this notice to the undersigned.

[1] FCC 03-113 released October 6, 2003.

Respectfully submitted,



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Presentation to the FCC Regarding
Salmon/Cingular Spectrum Manager Lease

I. The Current Situation:

- Salmon is a very small business designated entity (DE) controlled by Crowley Digital Wireless LLC, which in turn is controlled by entrepreneur George D. Crowley Jr.
- Cingular Wireless is a major investor in Salmon and provides management and other services to Salmon pursuant to FCC-approved operating agreements.
- Salmon holds licenses in 45 markets covering a total population of approximately 12 million people.
- Salmon has constructed and is operating commercial systems in multiple markets and will be rolling out commercial service in additional markets between now and 2006.

II. Salmon Would Like to Become a Spectrum Lessor Due to Changed Circumstances:

- The FCC's *Spectrum Leasing Order* provides welcomed flexibility in the business arrangements that license holders now can pursue.
- The final outcome of the *NextWave* case dramatically alters the Salmon business plan:
  - Salmon was unable to secure 34 of the 79 licenses on which it was the high bidder at Auction 35 including some of the most populous markets (e.g., Atlanta, Baltimore, Boston, Dallas, Denver, Houston, Los Angeles, Tampa, Washington, D.C.).
- A spectrum manager leasing arrangement is a potentially attractive alternative for Salmon which now holds licenses in 45 relatively small and dispersed markets.

III. Commission Review and Approval of the Proposed Salmon Spectrum Lease in the Near Term is Necessary and Appropriate:

- Salmon, Cingular and third party lenders have a compelling interest in making sure that Salmon maintains its designated entity status.
- Although prior FCC approval of a spectrum manager lease is not required, the parties are unwilling to proceed without a degree of certainty:
  - The spectrum leasing rules are brand new, making it impossible to know how they will be applied in practice.

- There is sufficient uncertainty regarding the application of the new leasing rules to DEs -- particularly whether the *Intermountain Microwave* criteria apply only to the DE's leasing operations or also to the underlying operations of the facilities -- to make further guidance appropriate.

- Reviewing and approving a proposed Salmon/Cingular spectrum lease would be consistent with the FCC's rules and policies:
  - Section 1.41 of the FCC rules expressly allows interested parties to file "Informal requests for Commission action".
  - The *Spectrum Leasing Order,* para.125, provides that "interested parties might seek informal guidance *or a formal determination* from the Commission regarding a particular lease arrangement by means of a letter to the Commission..." (emphasis added).
- Time is of the essence:
  - Salmon cannot afford to devote substantial time and money to a spectrum lease that languishes unapproved.
  - The lease arrangement that makes sense today could be vastly different than the arrangement that will make sense months from now when many more markets have been brought on line.
- FCC approval of a Salmon spectrum lease will serve the public interest by adding clarity and thereby increasing the prospect that the secondary markets policy will reap benefits for consumers and promote the DE program.

IV. Salmon and Cingular are Considering Pursuing a Spectrum Manager Lease Containing the Following Elements:

- The primary business of Salmon would change from wholesale or retail PCS operations to spectrum leasing:
  - Cingular will lease all (or substantially all) of the Salmon spectrum capacity and assume front-line responsibility for the design and construction of facilities.
  - Salmon will rely on the facilities constructed by Cingular to meet applicable build-out requirements and thus will have a strong business incentive to ensure that facilities are constructed and operated in accordance with FCC rules.

- Crowley Digital will retain *de jure* control over Salmon PCS:
  - The ownership and control of Salmon will remain unchanged with DE-eligible Crowley Digital retaining control of the Management Committee and the key officer positions.
- Crowley Digital and Salmon will retain *de facto* control over the spectrum leasing business under the traditional *Intermountain Microwave* criteria.
- Salmon will satisfy the new *de facto* control criteria in the *Spectrum Leasing Order*:
  - Salmon will remain responsible for Cingular's compliance with FCC rules and policies as they pertain to the Salmon spectrum.
  - The new spectrum lease agreement will contain reporting requirements that give Salmon actual working knowledge of all license related activities.
  - Salmon will have rights of inspection and the right to modify or suspend any operations that are not in accordance with all applicable technical, environmental, safety and other legal requirements.
  - All filings required to be made under the Communications Act or the FCC rules with regard to the Salmon spectrum will be made by Salmon.