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April 7, 2004

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Marlene H Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

APR - 7 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Ms Dortch:

On April 6, 2004, the undersigned representatives of Salmon PCS, LLC ("Salmon") were joined by George D. Crowley, Jr., CEO of Salmon, and James Fredrickson, CTO of Salmon, in a meeting with Commission staff members Paul D'Ari, Paul Murray, Rita Cookmeyer, Gary Michaels and Kelly Quinn (by phone). The purpose of the meeting was to present the Commission with proposed revisions to the Commission's spectrum leasing rules that would grant FCC-licensed designated entities the flexibility necessary to fully take advantage of spectrum manager lease agreements, and to encourage the Commission to issue an order on reconsideration or a second report and order to implement such revisions in the near term. Attached is an outline of the presentation, copies of which were distributed at the meeting.

Salmon's oral comments were consistent with the formal comments and reply comments it filed in the secondary markets proceeding (WT Docket No. 00-230) on reconsideration and pursuant to the *Further Notice of Proposed Rulemaking*.¹

Please refer any question in connection with this notice to the undersigned.

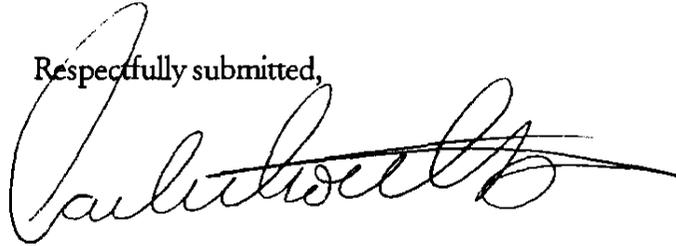
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¹ FCC 03-133, released October 6, 2003

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April 7, 2004
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl W. Northrop', with a long horizontal flourish extending to the right.

Carl W. Northrop
W. Ray Rutngarnlug
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Paul D'Ari
Rita Cookmeyer
George Michaels
Kelly Quinn
Paul Murray

**REVISIONS TO THE
SPECTRUM LEASING RULES
PROPOSED BY SALMON PCS, LLC**

(WT DOCKET NO. 00-290)

April 6, 2004

Salmon PCS LLC (“Salmon”), an FCC-Licensed Designated Entity (“DE”), is Asking the Commission to Revise the Rules Governing Spectrum Leases in Order to Provide DEs With Greater Flexibility to Enter Into Spectrum Manager Lease Arrangements

- One option is for the Commission to grant the petition for reconsideration filed by Cingular Wireless and supported by Salmon and to revise the rules in an *Order on Reconsideration*.
- Another option is to revise the rules in a *Second Memorandum Opinion & Order* pursuant to the comments filed by Salmon in response to the *Further Notice of Proposed Rulemaking*.
- Time is of the Essence – The Commission should choose the course that will enable the revised rules to take effect as soon as possible.

The Spectrum Leasing Rules Should be Changed to Eliminate the Continuing Applicability of the *Intermountain Microwave De Facto* Control Test As Applied to Spectrum Manager Leases Entered Into By DE Lessors With Non-DE Lessees

- The ruling in paragraph 113 of the *Spectrum Leasing Order* that the *Intermountain Microwave de facto* control standard would trump the new *de facto* control standard in the DE context should be revisited and changed.
- Section 1.9020(d)(4) of the spectrum leasing rules should be changed. (See next page).
- The newly adopted *de facto* control standard (see § 1.9010) should apply to all leases entered into by DE lessors, including leases with non-DE lessees, as contemplated in paras. 320 through 323 of the *Further Notice* in the Secondary Markets proceeding.
- As it does with *pro forma* assignments and transfers involving DEs, the Commission may require that spectrum manager leases involving DEs be subject to prior approval.

Salmon PCS Proposes that Section 1.9020(d)(4) of the Rules be Revised to Read as Follows:

1.9020(d)(4) **Designated entity/entrepreneur rules.** A licensee that holds a license pursuant to small business and/or entrepreneur provisions (see §1.2110 of Subpart Q of this part and §24.709 of this chapter) and continues to be subject to unjust enrichment requirements (see §1.2111 of Subpart Q of this part and §24.714 of this chapter) and/or transfer restrictions (see §24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee whether or not the lessee qualifies as a small business and/or entrepreneur so long as the lessor maintains de facto control over the leasing operation. The fact that the lessee exercises day-to-day control over the construction and operation of the underlying facilities that are operated on the leased spectrum shall not be deemed to cause the lessee to become ~~doing so does not result in the spectrum lessee becoming a “controlling interest”~~ (see §1.2110(c)(2) of Subpart Q of this part) or affiliate (see §1.2110(c)(5) of Subpart Q of this part) of the licensee such that the licensee would lose its eligibility as a small business or entrepreneur provided that the lessee satisfies the extent there is any conflict between the revised de facto control standard for spectrum leasing arrangements, as set forth in this subpart (see § 1.9010), and the definition of controlling interest (including its de facto control standard) set forth in § 1.2110 of Subpart Q of this part, the latter definition governs for determining whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the license or for other benefits such as bidding credits and installment payments.

There Are Ample Public Interest Justifications For Making the Rule Change Proposed by Salmon:

- Retention of the *Intermountain Microwave* standard for DEs has inhibited their ability to enter into spectrum leases in contravention of Section 309(j)(3)(B) of the Communications Act which requires the Commission to promote economic opportunities for designated entities.
- The existing restrictions on the leasing of spectrum by DEs to non-eligibles are inconsistent with Section 309(j)(4)(D) which obligates the Commission to provide meaningful spectrum-based opportunities for DEs.
- There is no opposition in the records of either the Secondary Markets *Further Notice* proceeding, or the reconsideration proceeding, to the relief Salmon is seeking.

- Spectrum leasing is an attractive business for designated entities because it is less capital intensive than constructing and operating facilities, and should be encouraged.
- The FCC has recognized correctly that it is in the public interest to foster the development of secondary markets, and this worthy goal is advanced if designated entities are given the flexibility they need to enter into spectrum manager lease arrangements.
- DEs are put at a competitive disadvantage by their inability to enter into a lease arrangement with a non-DE. This turns the DE program on its head.

The Rule Changes Proposed By Salmon Will Allow DEs to Lease Spectrum Without Relinquishing Control

- The facilities-based *Intermountain Microwave* test is outdated and fails to reflect the variety of service models that exist in the marketplace.
- Spectrum leasing is a *bona fide* business and the integrity of the Commission's rules and processes is maintained as long as the DE lessor maintains control of the leasing operation; the DE lessor need not operate the underlying facilities.
- By requiring DEs to get prior FCC approval of spectrum manager leases with non-eligibles, the Commission can assure that the DE retains sufficient control.