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FEDERAL COMMUNICATIONS COMMISSION
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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 SPRINT CORPORATION

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, "Sprint"), submits these comments in support of the Commission's proposal to facilitate the ability of licensees to lease their spectrum usage rights, thereby putting scarce radio spectrum to more productive use.[1] Specifically, the Commission proposes to permit CMRS carriers and other licensees of Wireless Radio Services to lease their spectrum in the same manner that certain licensees can already do today.

No one can reasonably dispute that the Commission's current transfer of control standard — the six-factor *Intermountain Microwave* test developed nearly 40 years ago[2] — stands as a major barrier to the effective operation of a secondary market for radio spectrum. Few firms have an interest in leasing another's spectrum if the lessor must retain the right to have unfettered use of the lessee's facilities and equipment, to control the lessee's daily operations, to interfere with lessee's employment decisions, and to receive

[1] *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets,* WT Docket No. 00-230, *Notice of Proposed Rulemaking,* FCC 00-402 (Nov. 27, 2000), *summarized in* 65 Fed. Reg. 81475 (Dec. 26, 2000)("*Secondary Markets NPRM*")..

[2] *See Intermountain Microwave,* 12 FCC Rcd 559 (1963).

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the profits generated from the lessee's operations. Liberalizing (or better, eliminating) this antiquated control standard would permit the more flexible use of spectrum that, as 37 noted economists observe in turn, "will unleash large efficiencies in spectrum management."[3]

The Commission unquestionably has ample legal authority to liberalize its control standard so that scarce spectrum can be used more efficiently and productively. As the Commission correctly notes, Congress intentionally decided not to define the word 'control' in Section 310(d) of the Communications Act precisely so the Commission would have the flexibility to define the term in the context of the public interest as it exists in the realities of the current marketplace.[4] The fact that certain licensees (*e.g.*, ITFS, band managers) can already lease spectrum without Commission approval of the leases only confirms that no significant legal issues are raised by the current spectrum lease proposal.

Sprint encourages the Commission to approve its spectrum lease proposal expeditiously, and it supports the Commission's proposal to address the easy cases (commercial licensees holding exclusive licenses) before addressing the more complicated cases (*e.g.*, shared spectrum, public safety and mass media licensees).[5] The telecommunications marketplace is undergoing radical change, yet commercial radio networks such as Sprint PCS' state-of-the-art CDMA network are very complex. It can often can take a year or longer for a carrier to activate a new service or feature once the planning process is complete. Permitting spectrum leases on a wide scale basis would open entirely new business opportunities and would increase dramatically the options that carriers could pursue to

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[3] Comments of 37 Concerned Economists at 2.

[4] *See Secondary Markets NPRM* at ¶ 71.

[5] *See, e.g., Secondary Markets NPRM* at ¶¶ 24 and 63-69.

serve the public in innovative ways. Deferring relief for commercial telecommunications carrier licensees while the Commission wrestles with the complexity of more difficult cases would only defer needlessly the substantial public benefits that prompt adoption of the Commission's proposal would facilitate.

A group of 37 noted economists characterizes the Commission's proposal as "modest," and they recommend that the Commission "eliminate all requirements that are not related to interference or anti-competitive concentration."[6] These economists make persuasive arguments, and Sprint agrees that more fundamental reform is warranted. But the need for spectrum leasing is today, and Sprint is concerned that consideration of more radical reform would delay relief on much needed spectrum leasing flexibility. Better to take a first step than to defer taking any steps. Sprint would hope that the 37 economists would agree that even narrow relief awarded promptly is better than deferring any relief for an extended period of time. As these economists aptly recognize:

> Delay will impose huge costs on consumers as the market starves for access to radio spectrum today. Further delays continue the costly waste of perishable services available from misallocated spectrum.[7]

The Commission asks a wide-ranging series of questions regarding "additional requirements," such as new due diligence and certification obligations, that might be placed on licensee/lessors as a replacement for the current *Intermountain* standard. This inquiry is certainly understandable, but Sprint urges the Commission to proceed with caution before imposing any "additional requirements." By definition, any new regulations imposed on spectrum leases would reduce the flexibility of parties to tailor each lease to meet their particular needs, would almost certainly increase costs, and depending

[6] Comments of 37 Concerned Economists at 5 and 7.

on the "additional requirements" imposed, could stands as new obstacles to the rapid and robust development of a secondary market for spectrum. Simply put, the Commission should not substitute the current set of unnecessary control regulations with a new set of unnecessary regulations. It is time for the Commission to trust market forces to provide the services that the public demands. As the 37 economists note correctly, the Commission's role should to "restructure its rules to *allow* a secondary market," and not to determine how the secondary market should develop.[8]

The Commission also asks about the applicability of numerous service, qualifications, eligibility, and use rules in the spectrum leasing context. This, too, is an entirely appropriate inquiry, but given the sheer number of rules that are potentially impacted, Sprint is concerned that full consideration of each issue could delay spectrum leasing relief by a year or more. Sprint therefore recommends that the Commission bifurcate this proceeding by promptly entering an order authorizing spectrum leasing and retaining any existing rules (*e.g.*, attribution, entrepreneur, aggregation) that may merit more extended consideration. Once this first step has been taken, the Commission can then consider more extensive relief, including the proposals suggested by the 37 economists.

Sprint agrees with the 37 economists that this proceeding is of "great importance to American consumers, entrepreneurs, and the growth of our economy."[9] Sprint be-

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[7] Comments of 37 Concerned Economists at 5.

[8] Comments of 37 Concerned Economists at 5 (emphasis in original).

[9] Comments of 37 Economists at 2. This is one point where Sprint cannot agree with the economists — namely, their statement in passing that ultra-wideband ("UWB") technology is "non-interfering." *Id.* Sprint has submitted the results of a study it conducted with a UWB vendor demonstrating that UWB devices cause harmful interference to sophisticated CDPCS MA networks. *See* Sprint PCS Supplemental Comments, ET Docket No. 98-153 (Oct. 6, 2000); Sprint PCS/Time Domain, UWB Interference Modeling and Testing, ET Docket No. 98-153 (Sept. 12, 2000).

lieves that there will be general consensus five years from now that this rulemaking proceeding was one of the most significant proceeding that the Commission addressed in 2001. The subject merits the Commission's highest attention and deserves expeditious action. Sprint encourages the Commission to enter an order approving spectrum leases during the summer of 2001.

Respectfully submitted,

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February 9, 2001

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 9th day of February 2001, I served a copy of the foregoing Comments of Sprint Corporation by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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