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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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**
	)	

REPLY COMMENTS OF THE INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its reply comments in response to the Federal Communications Commission's Notice of Proposed Rule Making (NPRM) in the above-referenced matter.[1] ITA commends the Commission's efforts to promote spectrum efficiency through the development of secondary markets in the "Wireless Radio Services."[2] As discussed below, ITA joins the commenters in their broad support of spectrum leasing, and additionally recommends the adoption of a spectrum leasing proposal based on a band manager framework. Moreover, ITA urges the Commission to take concrete steps to facilitate and encourage spectrum leasing. ITA agrees with commenters who favor the adoption of flexible eligibility and service rules, as well explicit incentives to engage in leasing.

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[1] *See* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, WT Docket No. 00-230 (rel. Nov. 27, 2000) (NPRM).

[2] *Id.* at n.19, stating that the "'Wireless Radio Services' . . . include all radio services authorized in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97, and 101 of Chapter 1 of Title 47 of the United States Code," which includes the Private Land Mobile Radio Services (PLMR).

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Congress
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communication Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

II. Background

On November 9, 2000, the Commission adopted a Policy Statement[3] and the above-referenced NPRM, outlining principles for promoting the efficient use of spectrum through the development of secondary markets. In its Policy Statement, the Commission explains its proposal to develop a private sector market that would facilitate redistribution of spectrum to parties who valued the spectrum more or who could make use of otherwise unused spectrum. Increasing the efficient utilization of available spectrum serves the public interest by encouraging the deployment of additional services, including innovative new service offerings.[4] The complimentary NPRM examines ways in which the Commission could revise or otherwise modify its regulations in order to facilitate the development of secondary markets, including the development of a spectrum leasing plan based upon a band manager licensing framework.[5]

III. Discussion

The comments in this proceeding indicate the industry's sweeping support for the establishment of secondary markets. ITA joins this consensus and fully endorses the concept of spectrum leasing to facilitate the more efficient use of spectrum. ITA additionally urges the Commission to implement spectrum leasing through a band manager licensing framework where appropriate and feasible. As discussed below, a band manager licensing mechanism contains inherent incentives to maximize the efficient use of spectrum through leasing agreements. As an additional matter, the Commission should take steps to ensure the development of a robust

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3 *See* In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, *Policy Statement*, FCC 00-401 (rel. Dec. 1, 2000) (Policy Statement).

4 *See Id.* at ¶ 12.

5 *See* NPRM at ¶ 22.

secondary market in spectrum. For example, the Commission should reduce unnecessary barriers to spectrum leasing by employing flexible eligibility and service rules. Additionally, the Commission should establish explicit incentives to encourage spectrum leasing, such as providing licensees who engage in spectrum leasing with more time in which to satisfy construction requirements.

A. Spectrum Reuse and a Band Manager Licensing Framework

Virtually all commenters endorsed, at a minimum, the general concept of spectrum leasing.[6] ITA agrees with these commenters and applauds the Commission's efforts to maximize the efficient use of spectrum through secondary markets. "Reusing" licensed spectrum that lies fallow will directly increase spectrum utilization, thereby promoting the public interest. Not only will spectrum leasing increase service offerings to the public but spectrum leasing will increase the likelihood that services will be provided to rural or otherwise underserved areas. Leasing allows service providers with critical spectrum needs, in sometimes obscure markets, to obtain spectrum from licensees with additional capacity.

ITA further encourages the Commission to adopt a licensing approach similar to the Guard Band Manager approach adopted in the 700 MHz proceeding.[7] As Nextel Communications, Inc. explained in its comments, "[I]n its licensing of the 700 MHz Guard Band spectrum . . . the Commission 'crossed the bridge' in not only authorizing but actively promoting

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6 *See, e.g.,* Comments of Blooston, Mordkofsky, Dickens, Duffy and Prendergast (Blooston Comments); Comments of Enron Corporation (Enron Comments); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies; Comments of the American Mobile Telecommunications Association, Inc.

7 *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (rel. Mar. 9, 2000) (700 MHz Second R&O).

leasing arrangements."[8] A band manager framework, similar to that adopted in the 700 MHz proceeding, would promote flexibility and the development of leasing arrangements by making spectrum readily accessible to potential end users in amounts that suit their individual needs. A band manager could act as a kind of spectrum "clearinghouse," ensuring that excess and available spectrum is swiftly paired with service providers with critical spectrum needs. As the Commission already has acknowledged in the context of its 700 MHz proceeding, a band manager framework affords many benefits, including increased flexibility of spectrum use and the development of a "free market" in spectrum.[9]

The use of a band manager licensing framework is particularly appropriate in the context of this initiative to develop a robust secondary market in spectrum. A band manager would have an inherent incentive to spur the development of a healthy secondary market in spectrum, because its sole purpose would be the leasing of spectrum to third party users. The band manager framework directly correlates an increase in spectrum utilization with an increase in financial gain, thus applying market pressures to efficient spectrum management. A band manager that discriminates among potential service providers based upon factors such as the service area population, size of business or minority ownership only undercuts its own financial interests; a band manager must progress toward full spectrum utilization, without disparity, in order to maximize its profits. For this reason, a band manager is more likely than a typical licensee to ensure the complete build-out of a given market. Unlike a wireless licensee, whose principle business is the provision of wireless service within its discrete licensed area, a band manager's principle focus would be the optimal use of all available spectrum within its geographic area.

8 *See* Comments of Nextel Communications, Inc. at 5.
9 *See* 700 MHz Second RO&O, 15 FCC Rcd at ¶¶ 26-32.

Accordingly, a band manager, through geographic licensing and lease contracts, would be better positioned to fully develop rural and underserved areas.

B. Flexible Eligibility and Service Rules

The Commission's NPRM seeks comment on whether "additional flexibility might promote secondary markets without undermining public interest considerations," acknowledging that service rules "may reduce efficiency not only by preventing licensees themselves from using the spectrum in more productive ways, but also by inhibiting licensees from transferring or leasing spectrum usage rights to users who value spectrum the most and could use it most productively."[10] ITA agrees with Enron Corp. that service-specific rules "must not prevent spectrum users [from] adapting their spectrum to provide services that meet the demands of the market on both a short-term and long-term basis."[11] As Enron Corp. explained in support of its proposal to relax service rules, "[a]llowing licensees to transfer their spectrum free of particular radio service restrictions will lead to more efficient utilization of spectrum."[12]

ITA submits that providing flexible service rules for like services in secondary markets will not undermine public interest considerations; on the contrary, flexible service rules will *promote* the public interest by allowing providers with exclusive access to spectrum to lease their excess capacity to a variety of users. By reducing restrictions placed upon spectrum use, the Commission will permit a wider variety and increased number of users to access and utilize spectrum. Increasing flexibility will promote greater liquidity in spectrum, furthering the Commission's goal that "spectrum usage rights may be an increasingly fungible commodity in

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10 *See* NPRM at ¶ 9.
11 Enron Comments at 17.
12 *Id.*

secondary markets."[13] Given the shortage of available spectrum to satisfy both incumbent and potential licensees' needs, perpetuating inflexible service rules that hinder the full and efficient utilization of spectrum directly contravenes the public interest. As the Commission noted, "flexible use—that is, expanding the range of permissible uses within a particular service—may increase efficient use of spectrum in general and enhance the operation of secondary markets in the use of spectrum."[14]

C. Incentives to Engage in Leasing Excess Spectrum

ITA shares the concern expressed by commenters that excess spectrum could remain underutilized and lie fallow if the Commission does not establish explicit incentives for licensees to lease spectrum.[15] ITA agrees with the Land Mobile Communications Council (LMCC) that "regulatory incentives, when coupled with the possibility of increased revenues, would enhance the prospects for the development of a robust secondary market as licensees consider spectrum leasing as a viable business option."[16] ITA urges the Commission to adopt LMCC's suggestion to provide spectrum lessors with additional time to satisfy construction requirements. ITA further recommends that the Commission adopt additional incentives to encourage licensees to use spectrum efficiently and participate in spectrum leasing. For example, the Commission could adopt bidding credits or other financial and regulatory credits for participation in a spectrum

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13 NPRM at ¶ 92.

14 *Id.* at ¶ 93.

15 *See* Comments of the Land Mobile Communications Council at 5-6 (LMCC Comments); Comments of UTStarcom at 3-4 (UTStarcom Comments); Blooston Comments at 7-10.

16 LMCC Comments at 5.

leasing plan.[17] Offering such incentives to lease excess spectrum will promote the development of rural areas[18] and encourage full spectrum utilization by all FCC licensees.

IV. Conclusion

ITA supports the Commission's initiative to eliminate barriers that impede the development of a secondary market in spectrum. Allowing users with a critical spectrum shortage to access additional spectrum through a lease contract will serve the public interest. Accordingly, ITA urges the Commission to promote spectrum leasing and to adopt a band manager licensing framework for its implementation, thereby ensuring the rapid development of a healthy secondary market. ITA also supports the adoption of flexible eligibility and service rules throughout the wireless radio services, making spectrum usage rights more fungible. Finally, the Commission should establish incentives to encourage leasing among wireless users with excess spectrum capacity, such as extending the build-out period for lessors. By adopting

17 *Cf.* Blooston Comments at 7-9.

18 *See Id.* at 7-10. *See also* UTStarcom Comments at 3.

these proposals, the Commission can promote a robust secondary market in spectrum and remove any unnecessary obstacles to its development and operation.

Respectfully submitted,

INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201
703-528-5115

By: /s/ Laura L. Smith

Laura L. Smith
President and CEO

/s/ Jeremy Denton

Jeremy Denton
Director, Government Affairs

Date: March 9, 2001

CERTIFICATE OF SERVICE

I, Jeremy W. Denton, do hereby certify that on the 9th day of March 2001, I forwarded to the parties listed below a copy of the foregoing Comments of the Industrial Telecommunications Association, Inc. via hand delivery:

Peter A. Tenhula, Esq.
Senior Legal Advisor
Office of Chairman Michael K. Powell
445 12th Street, S.W., 8-B201
Washington, DC 20554

Mark Schneider, Esq.
Senior Legal Advisor
Office of Commissioner Ness
445 12th Street, S.W., 8-B115
Washington, DC 20554

Bryan Tramont, Esq.
Legal Advisor
Office of Commissioner Furchtgott-Roth
445 12th Street, S.W., 8-A302
Washington, DC 20554

Adam Krinsky, Esq.
Legal Advisor
Office of Commissioner Tristani
445 12th Street, S.W., 8-C302
Washington, DC 20554

Thomas J. Sugrue, Esq.
Chief, Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Kathleen Ham, Esq.
Deputy Chief, Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C255
Washington, DC 20554

D'wana R. Terry, Esq.
Chief, Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C321
Washington, DC 20554

Ramona E. Melson, Esq.
Deputy Chief, Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C237
Washington, DC 20554

Mr. Herbert W. Zeiler
Deputy Chief, Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C343
Washington, DC 20554

Paul Murray
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-B442
Washington, DC 20554

Donald Johnson
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-A332
Washington, DC 20554

Office of the Secretary
445 12th Street, SW, Room TW-325
Washington, DC 20554

/s/ Jeremy W. Denton
Jeremy W. Denton