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March 14, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

Ex Parte Memorandum

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

Dear Ms. Dortch:

Ericsson Inc. (“Ericsson”) by its attorneys, submits these Comments supporting the Petition filed by T-Mobile USA, Inc. (“T-Mobile”) for Reconsideration or, alternatively, a Clarification (“Petition”) of the *Second Report and Order*.¹ T-Mobile requests that the Commission confirm that the supplemental declaratory rulings on foreign ownership recently adopted in the *Second Report and Order* are not required each time a proposed lessee, assignee, or transferee (“lessee”) is merely facilitating or expanding its existing business, if the lessee has received a prior declaratory ruling on its foreign ownership and that foreign ownership has not changed.² Because Ericsson believes that T-Mobile’s request will further the Commission’s goal of encouraging the free flow of spectrum in response to market demand and will pose no additional burden on national security, public safety, or foreign policy, Ericsson supports T-Mobile’s Petition.

Ericsson is a global supplier of end-to-end communications solutions and sells equipment and services in more than 140 countries. Like T-Mobile, Ericsson supports the Commission’s efforts to promote efficient spectrum use through secondary markets and congratulates the agency for adopting streamlined procedures in many spectrum leasing, license assignment, and transfer of control transactions. As T-Mobile notes, however, “despite the clear benefits of forbearance from prior approval” in many secondary market transactions, “several...spectrum users might be deprived of many of these benefits because of their foreign ownership under the policies announced in the *Second Report and Order*.” In order to be eligible for forbearance from prior approval in many secondary

¹ *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, 19 FCC Rcd 17,503 (2004) (“*Second Report and Order*”).

² Petition for Reconsideration or, in the Alternative, Clarification of T-Mobile USA, Inc., *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230 (Jan. 27, 2005) (“T-Mobile Petition”).

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market transactions, the lessee must first obtain a declaratory ruling.³ In the *Second Report and Order*, the Commission adopted a requirement that the lessee certify that the proposed transaction falls within the scope of the prior declaratory ruling.⁴ If the transaction is not within the scope of the prior declaratory ruling, including the “type of service and geographic coverage area,” the lessee must seek an additional declaratory ruling for the transaction.⁵ This provision can potentially create significant administrative burdens on those spectrum users with foreign ownership.

In the highly competitive wireless industry, speed and flexibility are essential to respond to market demand. Ericsson believes that the supplemental declaratory rulings required by the *Second Report and Order* not only could block a carrier that has already received foreign ownership approval from using streamlined procedures, but, as T-Mobile states, could also have a “crippling effect” by “delaying a carrier’s ability to consummate transactions quickly and on the same schedule as its competitors.”⁶ Instead, the Commission should forbear from supplemental declaratory rulings based on a prior declaratory ruling if the foreign ownership of the ultimate controlling entity will remain the same *and* the licenses involved in the transaction will support the applicant’s existing business and will not fundamentally change the nature or geographic scope of that business.

In addition, the Commission should not require supplemental rulings for entities that are or will become wholly-owned direct or indirect subsidiaries of a parent that has already received a prior declaratory ruling, unless the transaction causes the foreign ownership of the controlling entity to exceed the levels permitted in the earlier ruling. Ericsson supports this approach because it furthers the Commission’s goals of “significantly expanding and enhancing secondary markets to permit spectrum to flow more freely among users and uses in response to economic demand.” At the same time, it fully preserves the interest of the Commission and the Executive branch in pursuing national security, law enforcement, public safety, foreign policy, and other public interest objectives.

Pursuant to Section 1.1206 of the Commission’s rules, this letter is being electronically filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

s/ Mark Racek
Mark Racek
Director, Spectrum Policy
Ericsson Inc

s/ Elisabeth H. Ross
Elisabeth H. Ross
Attorney for Ericsson Inc

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³ See *Second Report and Order* at ¶21.

⁴ See *id.*

⁵ *Id.*

⁶ *T-Mobile Petition* at 7.