Abandoned 2 GHz MSS Spectrum

Presentation by

CTIA - The Wireless Association™

June 30, 2005

OVERVIEW

- The 24 MHz of abandoned 2 GHz MSS spectrum is valuable spectrum.
- The FCC should seek comment on the best use of *all* abandoned 2 GHz MSS spectrum – including reallocation to an auctionable service – rather than engage in a presumptive, piecemeal giveaway to licensees that are not yet operational.
- The FCC has consistently declined to adopt a policy regarding abandoned 2 GHz spectrum.
- The FCC has said that 5 MHz is sufficient for providers to commence 2 GHz MSS; TMI and ICO currently have 8 MHz.
- The FCC should not deviate from its approach in the Big LEO proceeding, where it sought comment on both the possible reassignment and reallocation of abandoned spectrum.

THE FCC HAS DECLINED TO ADOPT A POLICY TO ADDRESS ABANDONED 2 GHz MSS SPECTRUM

- There is no 2 GHz redistribution policy:
  - "Spectrum abandoned by authorized systems may be available for expansion of *systems that are operational* and require additional spectrum. We do not, however, establish a policy or rule for redistribution of abandoned spectrum here." *2 GHz Order*, 15 FCC Rcd 16127, ¶ 18 (2000) (emphasis added).
  - "[W]e have not established nor do we do so here any policy or rule regarding the use of additional abandoned spectrum that may result after future MSS milestone reviews are completed." *AWS Third R&O*, 18 FCC Rcd 2223 ¶ 32 (2003).
- The FCC has said all options should be considered:
  - The FCC has emphasized its "continuing spectrum management obligations to ensure that the spectrum is used efficiently and effectively," including consideration of "the reallocation of spectrum if 2 GHz MSS licensees fail to meet their milestones" *AWS Third R&O* at ¶ 29.
- The *Space Station Reform* proceeding did not alter this decision.

IN THE ABSENCE OF A POLICY, THE FCC SHOULD CONDUCT AN OPEN INQUIRY

- Sound Spectrum Management
  - Spectrum management obligations compel fact-finding to determine the highest and best use of all 24 MHz of abandoned MSS spectrum.
  - The FCC should examine the benefit to the public of reallocating 24 MHz of nationwide spectrum to an auctionable service against awarding the majority of that spectrum to two non-operational MSS licensees.
- FCC findings on 2 GHz MSS spectrum needs
  - The FCC has stated that 5 MHz "is sufficient for commencement of service," *2 GHz Order* at ¶ 17, and TMI and ICO – non-operational entities – each have 8 MHz today.
  - While TMI claims to need more spectrum for ATC, the FCC specifically found that ATC will afford MSS operators "the ability to provide more and better services to both existing and potentially new subscribers *with the same amount of spectrum*." *ATC Order*, 18 FCC Rcd 1962 ¶ 20 (2003) (emphasis added).

BIG LEO PRECEDENT: CONDUCT AN OPEN INQUIRY

- In the Big LEO proceeding, two systems became operational while the remaining systems either surrendered their license or failed to meet the terms of their license. Iridium requested access to additional spectrum via a public petition for rulemaking to the Commission.
- In a comprehensive proceeding, the Commission sought "detailed comment" on current and planned spectrum needs of the two operators, as well as whether to reallocate the spectrum or open additional processing rounds.
- The Commission concluded: "We believe that *it is appropriate to seek comment on both the possible reassignment and possible reallocation of any returned spectrum for possible use by other services*." *Big LEO NPRM,* 18 FCC Rcd 1962 ¶ 265 (2003) (emphasis added).
- There is no justification not to follow the same course here, where neither TMI nor ICO is even operational.

CONCLUSION

- The FCC's spectrum management obligations and the Big LEO precedent compel an open inquiry to determine the highest and best use of all of the 24 MHz of abandoned 2 GHz MSS spectrum.
- Such consideration must include weighing the benefit to the public of converting the 24 MHz to an auctionable service versus the claimed spectrum needs of two non-operational entities.
- Premature conclusions to award large swaths of this spectrum to the benefit of only a few private entities in the absence of full public consideration are particularly inappropriate here.