SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 00-230 (adopted May 13, 2003)

Effective FCC management of the spectrum resource is critical because it is a finite natural resource with immense potential value to the American people. As I have previously stated, the goal of the FCC should be to create regulatory policies that foster effective investment and stimulate the delivery of services to the American people. If private parties don't invest, any theoretical spectrum policy is meaningless because the Commission must rely on the private sector to make it all happen.

There are many pieces of the puzzle that must be in place for the Commission to have a market-driven spectrum policy that encourages investment. One of the most important pieces and one that I have consistently supported is the creation of secondary markets for spectrum. We must have an effective and legally defensible secondary market if the property-like rights driven license model for spectrum-based services is to succeed.

When licensing spectrum-based services, parties are provided with a grant to specific spectrum rights. At times, however, the licensee may not be able to utilize the entire grant. Our challenge has been to harness that untapped resource. As a result of today's decision, incumbents will be able to sell the additional rights, thus allowing to evolving to its higher-valued use.

I believe that adoption of today's Report and Order shepards in a monumental shift in spectrum policy in the United States. This item recognizes the importance of creating a market-based approach to regulation by creating a secondary market for spectrum in the wireless radio services. In doing so, it substantially updates the FCC's standard for interpreting Section 310(d) of the Communications Act set forth in the 1963 *Intermountain Microwave*[1] decision for purposes of spectrum leasing. The Commission has broad authority to interpret the requirements of the Communications Act and has significant discretion to revise existing policies, doing so benefits the public interest and is consistent with our statutory authority.[2] The very changed nature of the wireless industry, coupled with the advances made in improving FCC spectrum policies and the need for more market-based forms of regulations, provide support for a change in the interpretation of Section 310(d) by the Commission. The new standard enables parties to enter into leasing transactions that are not deemed transfers of de facto control under Section 310(d) so long as the licensee continues to exercise effective working control over the spectrum while ensuring that the lessor and lessee comply with Commission requirements.

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[1] *Intermountain Microwave,* 12 FCC 2d 559 (1963).
[2] *See e.g., Telephone and Data Systems, Inc. v. FCC,* 19 F.3d 42, 49 (D.C. Cir. 1994); *Federal National Association for Better Broadcasting v. FCC,* 849 F.2d 665, 669 (D.C. Cir. 1988); *Telecommunications Research and Action Center v. FCC,* 800 F.2d 1181 (D.C. Cir. 1986).

I have no doubt that our efforts today to create a secondary market for spectrum for wireless radio services will lead to increased efficiency in the use of the spectrum, and will result in greater consumer benefits, including the provision of new and innovative services to consumers. In addition, the Further NPRM we are adopting will provide the Commission with additional public input so that we can continue to refine our secondary markets rules and policies. Over time, I am hopeful that the approach we are adopting today will serve as a model for other countries that are moving forward with creating increasingly vibrant and competitive regulatory environments for wireless services.