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VIA ELECTRONIC MAIL

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**Re: Submission of Cantor Fitzgerald Telecom
Response to Consultation Document “Implementing Spectrum Trading”
(July 2002)**

Dear Mr. Chapman:

Cantor Fitzgerald Telecom Services, LLC (“Cantor”) is pleased to make this submission to the U.K. Government in the above-referenced consultation. Cantor applauds the U.K. Government’s efforts to find ways to allow the market to improve the efficiency and efficacy of spectrum allocation to its highest and best use by providing for spectrum trading. Once again, the U.K. is spearheading measures that will foster competition and open the telecommunications market to new, advanced services. As a potential participant in this marketplace in the U.K.,

Cantor makes this submission in order to set forth certain principles which, Cantor submits, should guide the U.K. Government in shaping regulation to facilitate the development of an effective, efficient secondary market in wireless spectrum. Cantor also seeks to put to rest various unfounded concerns which have been mentioned from time to time in connection with spectrum trading.

A. Description of Cantor

Headquartered in North Carolina, USA, Cantor brokers telecommunications infrastructure and services, including dark fiber, collocation, conduit, and lit fiber. Cantor is one of the industry leaders in these areas in the United States.

Cantor is a subsidiary of Cantor Fitzgerald, L.P. ("Cantor Fitzgerald"). For over 55 years, Cantor Fitzgerald has been a market leader in the most efficient and cost effective trading. Cantor Fitzgerald is the leading broker-dealer in the U.S. government bonds and notes and is a major participant in U.S. agency bonds, mortgage backed securities, European and Asian government bonds, corporates, Eurobonds, U.S. municipals, repos, swaps and options, and all other major fixed income and credit market securities. The Cantor group of companies currently has more than 1,000 employees in offices throughout the U.S., Canada, Europe and Asia, and in particular in London. For more information, see <http://www.cantor.com/>.

Cantor Fitzgerald is also a majority owner in eSpeed, a publicly traded company. eSpeed enables market participants to transact business online instantaneously, more effectively and at a lower cost than traditional trading methods. eSpeed's electronic marketplaces today permit users to conduct trades in such products as bonds, bandwidth, futures, energy, telephone minutes and natural gas. For more information, see <http://www.espeed.com/>. eSpeed's platform can readily be adapted for trading in other telecommunications products, including wireless spectrum.

B. Spectrum Trading Should Be Introduced as Soon as Possible

The following comments and suggestions focus on Section 18 of the Consultation Document, in particular on its Question 25:

- a) What steps, if any, should Ofcom take to facilitate the start of spectrum trading markets?
- b) How can Ofcom assist the development of successful spectrum trading markets?
- c) Do you consider that intermediaries are likely to emerge through the market if there is demand, or will Ofcom need to assist, and if so how?

Cantor's experience shows that it is very possible to create a working trading market in the communications sector. Provided that certain minimum conditions are met, as generally outlined below, the market can work efficiently and effectively to facilitate the allocation of resources to their highest and best use.¹ Cantor fully agrees with the Radiocommunications Agency that "[t]he benefits [from spectrum trading] could be measured in billions of £s" (Consultation Document, Section A1-9). Intermediaries such as Cantor enable these markets to work more efficiently by providing a central location for buyers and sellers to find each other and to do business with low transaction costs on the basis of standardized terms and conditions. Cantor stands ready to assist in creating an effective secondary market in wireless spectrum in the U.K. with the long-term goal of spectrum becoming in many respects a commodity.

¹ Cantor agrees with the U.K. Government's statement on p. 2/3 and p. 7 of the Consultation Document: "Market participants generally know their spectrum requirements and have better information than a central regulator can have about the value of alternative uses of spectrum and consumers' preferences, and are better placed than the regulator to make decisions on spectrum distribution that maximise overall benefits. Spectrum trading empowers them to make these decisions."

1. The European Commission And The U.S. Federal Communications Commission Are Taking An Active Stance On Spectrum Trading.

The U.K. should not wait until “the end of 2004” until “some forms of trading in some forms of license classes” are introduced (Section 4.3 Consultation Document), but should expedite its introduction. Cantor agrees with the Government that “[c]ompared to licensing direct by the regulator, trading can provide new services and new spectrum users with faster access to spectrum, enhancing innovation and competition . . . and encouraging existing users to make better use of their assignments e.g. by better engineering and equipment utilisation” (Section 2.2 Consultation Document).

As further described hereinbelow, the U.K. can do so by recognizing that certain forms of spectrum leasing can be allowed without waiting for the full panoply of trading regulations to become effective.

The European Commission (“EC”) recently addressed the issue of secondary spectrum in its Communication “Towards the Full Roll-Out of Third Generation Mobile Communications” (COM(2002) 301 final), dated July 6, 2002. In that Communication, the EC announced its intention to promote spectrum trading in the Member States. The EC fully recognizes the significance of spectrum trading for this market sector:

There is today a growing perception about the benefits of a more flexible frame for handling rights of use of spectrum, leading to more liquidity in investments made in the radio sector. . . . Spectrum trading potentially changes the fundamental paradigm of future spectrum policy in the EU. In this respect, it has an important role to play in shaping also the future 3G sector. (EU 3G Communication, p. 18).

In the debate in the United States, the ideas behind -- and the reality of -- a spectrum secondary market are also gaining momentum. In the United States’ wireline marketplace, secondary trading is already a reality: Not only telephone minutes, but also fiber capacity,

capacity on shared lines, equipment, and satellite transponder capacity are bought and sold. Almost two years ago, the U.S. Federal Communications Commission (“FCC”) launched a rulemaking proceeding on spectrum trading.² The FCC more recently formed a Spectrum Policy Task Force and hosted industry workshops to evaluate spectrum policy and make recommendations, including recommendations addressing how best to foster the emergence of a secondary market.³ Cantor is actively participating in both these proceedings. As one option, the FCC’s Office of Plans and Policy is considering a “Big Bang” scenario in which *all* existing spectrum would be subject to re-auction, with proceeds to go to the current licensees. The FCC has received several rounds of comments on spectrum policy and the task force has been directed to submit its report by October 2002. Action in the rulemaking could occur as early as the fourth quarter of this year.

2. Spectrum Trading Is A Winning Proposition For All Stakeholders.

Spectrum trading holds advantages for every stakeholder in the industry. Generally, the roll-out of wireless services, in particular of 3G, is a “complex interaction between different players” (EU 3G Communication, p.5) that spectrum trading will facilitate. This facilitation will result in tangible benefits for all stakeholders, as follows:

For national governments: Much spectrum that has been allocated remains unused from time-to-time and place-to-place. Spectrum trading will foster the development of innovative technologies that will allow more efficient use of the spectrum. Moreover, it will allow for the

² *In the matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, FCC WT Docket No. 00-230.

³ See *In the matter of Spectrum Policy Task Force on Issues Related to Commission’s Spectrum Policies*, FCC ET Docket No. 02-135.

emergence of businesses interested in providing a new service well-suited to a particular frequency band. Finally, an active secondary market will allow the marketplace to opportunistically find and reallocate spectrum that is unused in small amounts, in limited geographic areas, or for periods less than the full license term. These are resources which are effectively perishable, since once unused they can never be reclaimed. A secondary market can allow these gaps to be filled in, thereby reducing waste.

For market players: Licensees will be able to use spectrum trading to make more efficient and flexible use of their spectrum, and to further their ability to react more flexibly to customer needs/trends. Cantor agrees with the Government that this may include a “change of the use to which the spectrum can be put” (Sections 5.1, 6.2 and 6.5 Consultation Document). Short-term trades can enable them to pass off spectrum they will not need in certain areas for limited times to persons who can use this portion of the spectrum. The revenues they receive will provide the marketplace incentive needed to cause this otherwise-wasted resource to flow to one who can make use of it.

For consumers: Consumers should see lower prices, since mobile operators will be able to lower costs by selling/leasing spectrum that they don't need, and competition will cause those savings to be passed on. In addition, the economic incentive to maximize efficient spectrum use will drive market participants to develop new spectrum-efficient services and technology and attract new investments and this too will benefit consumers, with improved services as well as lower costs.

3. Market Conditions Are Ripe For Greater Flexibility In Using And Disposing Of Spectrum.

Recent developments in the marketplace make clear that now is the time to move toward greater flexibility in spectrum use, including spectrum trading. From the technical perspective, wireless devices (base stations, receivers, etc.) are becoming smaller and more sophisticated. Many new devices are capable of tuning into different spectrum automatically and can be relocated more easily (even worldwide). There is less and less guard-band needed for equipment to tune into a frequency. Spectrum trading would enable carriers to make full use of the advantages that this advanced equipment provides.

From the service perspective, Cantor believes that spectrum trading is crucial for the success of UMTS. It furthers the EU-wide goal “to anchor 3G as one of the service platforms in a ubiquitous information society.”⁴ The market players need a maximum degree of flexibility for offering new products and services that only spectrum trading provides. Therefore, UMTS is probably the sector in which trading should first be introduced (Section 8.3 Consultation Document).

From the market perspective, it has become a commonplace that new and innovative uses for spectrum are being created at a pace that makes it more and more difficult for traditional regulatory allocation processes to keep up. Allowing a secondary market to emerge, subject to appropriate reporting and monitoring measures will enable the regulatory process to react appropriately to changing market conditions without acting as an obstacle to innovation.⁵

⁴ EU 3G Communication, p.10.

⁵ For this reason, Cantor urges the U.K. to relax or eliminate use restrictions on particular areas of spectrum except in areas where there is an important technical, public safety or national security reason for maintaining them.

Finally, spectrum trading is the next logical step following wireless network infrastructure sharing that many EU countries already provide for. There have been several decisions in EU Member States and by the European Commission in the 3G sector allowing UMTS licensees to share infrastructure such as antenna sites, etc.⁶ If antenna sites and other equipment can be shared, there is no reason to forbid spectrum trading as long as there is no interference with neighboring bands. And interference can be prevented by imposing on transferees/lessees of spectrum the same obligations as are imposed on licensees.

C. Tools to Create a Secondary Market

1. The U.K. Should Create A Regulatory System That Allows Wireless Market Participants To Trade As Flexibly As Possible.

Cantor agrees with the Radiocommunications Agency that “as many decisions as possible” should be made by the market and that the spectrum trading regime should be “as flexible as possible.” (Consultation Document, Summary iii and v). We also agree that “spectrum trading will be facilitated by the introduction of e-business into spectrum licensing.” (Section 2.12 Consultation Document). Intermediaries such as Cantor, with up-to-date databases and tested online trading tools will make it easy to match up buyers and sellers and allow them to enter transactions quickly and easily on the basis of standardized terms and conditions.

Spectrum intermediaries can also provide useful support for collecting and disseminating spectrum information for regulators. Setting up a system for trading will be a matter of weeks,

⁶ The most recent decision, dated September 10, 2002, is the clearance by the European Commission on the 3G network sharing agreements between T-Mobile and MM02 in the UK and Germany, *see* EU press release IP/02/1277 at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1277/0|RAPID&lg=EN&display=. Commissioner Monti stated that the approval will further the “faster introduction of new services, more competition and a lesser impact to the environment.”

not months if one or more online trading systems are set up. Therefore, it is important that the regulatory regime be flexible enough to allow a secondary market for spectrum to flourish.

Many of the inefficiencies present in the spectrum allocation process today stem from the inflexibility of the current methodology used for allocating spectrum and defining user rights. For the most part, today's methodology allocates blocks of spectrum of a fixed size, in a fixed geographic area, for a fixed time, for specified uses. In the real marketplace, however, portions of these discrete blocks may not be usable by a licensee for some period of time. For example, a licensee may not need or wish to cover all of its geographic area during the early stages of its business plan. Traditionally, the potential for use of this spectrum in such areas and during such times would be wasted.

The market-oriented mechanisms the Consultation contemplates could go a long way toward reducing or eliminating this waste if the licensee is given sufficient flexibility in determining what portion of the asset represented by its license right it can do without, and where and for how long it can do without it. Thus, licensees should be allowed to subdivide their rights, as to duration, geographic scope and quantity of frequency, and to be allowed to determine what portion or portions of their rights, as so subdivided, to lease downstream. This right should be accorded to incumbent licensees as well as new licensees.

Similarly, efficiencies will be increased if trading is facilitated at all points of the facility-construction cycle. Accordingly, licensees should be permitted to convey spectrum use rights alone, rights plus facilities or simple capacity. In addition, more than one round of trades may be needed to allow the market to seek out the best allocation of an asset. Therefore, sublessors should be allowed the same flexibility as lessors in regard to how to sublease spectrum, both as

how to subdivide it and in what form (spectrum use, facilities plus rights, simple capacity) to sublease it.

One of the key benefits of such flexibility would be that it could allow the emergence of a short-term market, which would satisfy short-term needs for communications capacity with minimum transaction cost and without undue regulatory delays. For example, the sponsors or broadcasters of a major sports event might need a large amount of spectrum, but in a limited geographic area, and only for a few days. Similarly, the general contractor for a large construction project might have radio needs in a circumscribed area for several months. A flexible market would meet these users' needs in a highly efficient manner and allow the productive use of otherwise wasted spectrum.

2. The Regulatory Environment Must Foster Transparent And Reliable Market Tools To Be Accepted By The Market Players.

Cantor agrees with the Radiocommunications Agency that "one of the main advantages of trading is the capacity to promote competition by making it easier for businesses to acquire spectrum for new services." (Section 10.1 Consultation Document). An online trading forum requires standardized terms and conditions in order to be accepted by the market participants. In particular, the information on the spectrum should be consolidated so that it is more readily available to potential buyers and sellers. A pilot project might be helpful to encourage spectrum holders to participate in trading.

3. Spectrum Traders And Intermediaries Should Be Treated Differently.

The U.K. Government has expressly recognized in the Consultation Document that there is a role for market-making intermediaries such as Cantor Telecom.⁷ Such intermediaries have expertise in matching up spectrum (as with other commodities) with lessees who will make the most efficient use thereof. Unlike “traders,” who would actually take a position in spectrum, buying and selling for their own account, intermediaries such as Cantor Telecom would be strictly brokers or run trading floors without taking a leasehold or similar position in the spectrum rights themselves. Because of their purely market-facilitating functions, such intermediaries should not be required to ensure compliance with radio transmission rules; this responsibility should instead be shared by licensees and the end users of the spectrum.⁸ The databases maintained by intermediaries can, however, assist the regulator in enforcing such rules by helping the regulator identify the end user when reports are made of a non-compliant use of the spectrum.⁹

Intermediaries also would serve the market in another way. When electronic trading floors are set up or brokerage arrangements entered into, the trading floor operator or broker will generally do business with buyers and sellers on the basis of standardized terms and conditions,

⁷ See Section 8.6 Consultation Document: “Prioritisation in the introduction of trading will also need to take account of the demand for trading to be available. This could depend on market developments such as the emergence of intermediaries and market mechanisms that meet the needs of potential buyers and sellers.”

⁸ Intermediaries would recognize only fee income, not capital gains, and hence would not raise the concerns set forth in Question 24 of the Consultation Document.

⁹ In addition, Cantor suggests that end users that are actually transmitting on the spectrum should be required to file periodic reports with the regulators, which reports could serve as a basis for resolution of interference problems. The reports would contain such information as contact information for the user, the frequencies on which the user is transmitting, the power limitations observed by the user and the locations from which (or areas within which) the user is transmitting.

as opposed to the individually negotiated terms that characterize many if not most bilateral trading relationships. The establishment of standardized terms and conditions allows transactions to be entered into quickly and with low transaction costs, as contrasted with the time-consuming cost-intensive negotiations associated with bilateral deals.

4. Spectrum Trading Would Be Facilitated By An Advanced Trading Platform.

Spectrum trading will advance most rapidly if intermediaries are allowed to develop platforms to facilitate trading by market participants. The first step would be for the intermediary to build a database of interested buyers/lessees and sellers/lessors, with relevant information regarding the types and locations of spectrum that is available from potential sellers/lessors and those for which there are interested buyers/lessee. The intermediaries' task will be facilitated to the extent the government makes available a database available that enables easy identification of current licensees and their holdings (*See* Section 18.4 Consultation Document). Cantor agrees with the Radiocommunications Agency that it may take significant time for a market to develop. However, the development will be expedited by providing an advanced, tested platform to the participants. Advanced platforms, such as eSpeed's trading platform, are scalable to manage small and large traffic volumes.

D. Allowing Spectrum Leases Would Be An Ideal Mechanism For Introducing Spectrum Trading Within A Short Time Period

Many regulatory issues can potentially be avoided by allowing spectrum leases for providers in any geographic or service area for any period of time during the term of their licenses. Cantor agrees that "[l]easing spectrum is considered likely to be an attractive option as the transaction is time-limited and the spectrum reverts to the seller eventually. This may make potential sellers more willing to trade" (Section 7.8 Consultation Document). Spectrum leases

are one important “mode” of spectrum trading, in addition to the “modes” set forth in the Consultation Document¹⁰, namely:

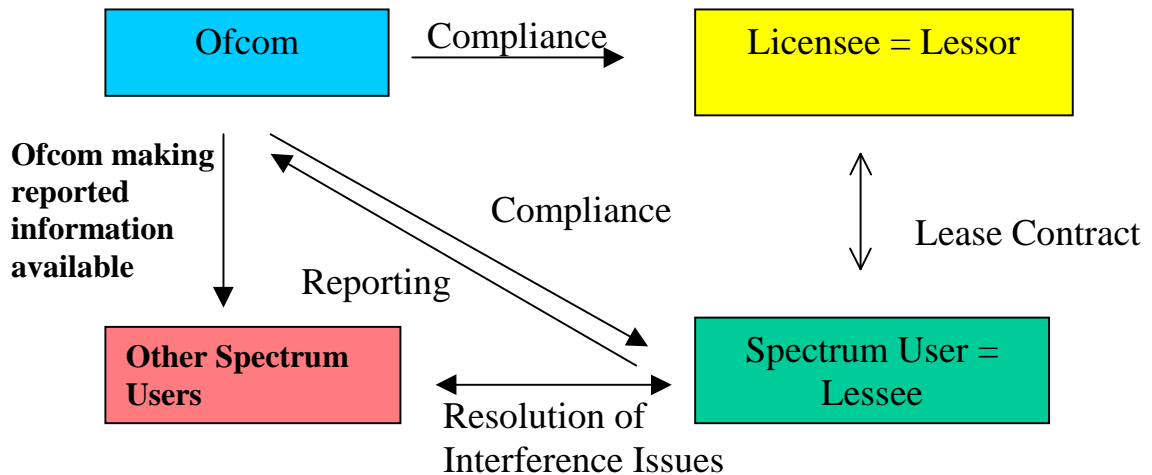
- trading that comprises solely change of ownership of a license;
- reconfiguration, which may involve either partition or aggregation of spectrum assignments, as well as change of ownership;
- change of use, which may be limited or extensive,¹¹ as well as reconfiguration and change of ownership.

The underlying idea of spectrum leases is that there is no assignment of a license. Instead, the licensee remains the same entity, and allows a third party to use all or part of its licensed spectrum on a leased basis for a fixed period of time, with the express right to reclaim the leased spectrum upon expiration or upon violation by the lessee of any of the terms and conditions of the lease. Because of this difference, the U.K. Government should avoid using the terms “seller” and “buyer” to include “lessor” and lessee” (Section 7.4 Consultation Document). Spectrum leasing is a very flexible tool since it allows a third party to use the spectrum on a temporary basis. In this respect, flexibility should be given to existing licensees in determining how to subdivide their licensed spectrum and on what basis to lease or otherwise make it available to downstream entities. In order to reach this goal, there should be no prior approval of

¹⁰ P. 3 Consultation Document, which, further down in the text refers to “short term leases” and “long term leases.”

¹¹ See Section 9.3 Consultation Document: “The degree to which change of use and reconfiguration are permitted in practice, and the extent to which ex ante checks are necessary, will depend on various factors and can be expected to vary from sector to sector. For change of use, it will be necessary to take into consideration: a) harmonisation, competition and other requirements of the Framework Directive; b) international coordination requirements; c) risk of interference; d) technical requirements as expressed in licence terms and conditions; e) whether Ofcom should intervene to maintain diversity in radio services so that, for example, mobile communications offers a range of alternatives from self-provided private mobile radio through trunked mobile systems to cellular telephony; and f) any relevant public policy requirements.”

Ofcom regarding the lessee's spectrum use, but only reporting requirements.¹² The following viewgraph illustrates the relationships:



The licensee should contractually require the lessee to assure compliance with the spectrum rules and should retain the right to reclaim the leased spectrum in the event of noncompliance. The lessee should, in particular, be contractually obligated:

- To cooperate with Ofcom.
- To obey all Ofcom rules regarding transmission over the leased spectrum.
- To accept Ofcom's oversight and enforcement pursuant to the license conditions.
- To comply with reporting requirements to Ofcom regarding the use of the leased spectrum.
- To return the spectrum to the licensee in the event of any noncompliance with the above.

¹² The Consultation Document mentions notifications of trades to Ofcom several times (see pages 4 [Section ix] and 9 [Section 2.9])

Under this model, Cantor submits, the licensee (lessor) can be considered to remain the “right holder” of the frequencies (Art. 5(2) EU Authorization Directive 2002/20/EC)¹³ and the license holder for purposes of U.K. law. However, in addition to the lessor’s contractual right to ensure compliance, Ofcom should be entitled to impose sanctions directly against the party actually transmitting on the spectrum (*i.e.*, the lessee) if it does not comply with the law or the license conditions.

E. Arguments Sometimes Raised Against Spectrum Trading Don’t Hold Water

Cantor recognizes that, in various contexts, certain concerns have been raised that purportedly militate against allowing flexible spectrum trading. Cantor believes that none of these arguments are well-founded. We set forth some of the more commonly heard arguments and the reasons why Cantor believes they are unfounded in the following section of this submission.

1. “Dominant Players Will Buy Up The Spectrum And Dictate The Price.”

This scenario is very unlikely since all incumbents/former PTTs lack funds “to rake up spectrum.” If this was really an issue, it could be could be tackled by existing competition protection tools, as set forth under Section 10.6 Consultation Document. In any event, fears of excessive concentration would be further allayed if regulators open more

¹³ Official Journal, OJ L 108, 24.4.2002, p.21: “Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking providing or using networks or services under the general authorisation, subject to the provisions of Articles 6, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).”

spectrum for use by service providers/spectrum trading. Further “safeguards” to prevent the “hoarding of spectrum” (Section 3.6 Consultation Document), are not necessary.

2. “Spectrum Trading Leads To A Fragmentation Of The Spectrum.”

Cantor believes that the premise of this objection is simply mistaken. There are many instances in which only small amounts of spectrum may be needed by a potential lessee, or spectrum is needed only for a short time or in circumscribed geographic locations. To the extent that potential sellers/lessors have these discrete pieces of the spectrum available, they should be allowed to decide to whom and on what terms to dispose of them. A licensee that knows it will need to re-consolidate its spectrum holdings for a foreseen future use will have the incentive and the ability to retain the right in any lease to reclaim the spectrum at a future time, or will simply enter into a shorter term lease than it otherwise would. Alternatively, the licensee can simply reacquire spectrum in the secondary market should the need arise.

3. “Spectrum Trading Dilutes Or Violates Existing License Conditions And Undermines Predictability/Business Cases Of The Wireless Competitors.”

This stated concern, which resembles the Radiocommunication Agency’s concern voiced in Section 8.5 of the Consultation Document, is unfounded for a number of reasons.

Predictability is already absent from the extremely dynamic wireless market (the development of UMTS in Europe speaks volumes in this regard). Rather, the ability to assign spectrum will lead licensees to use only the bandwidth that is needed to guard the value of their investment; excess capacity will become available to the market. If spectrum is traded on this basis, it will not be necessary to wait three years or longer (Section 8.5 Consultation Document) before trading is allowed.

4. “Spectrum Trading Will Lead To Uncontrollable Interference Problems.”

Even though Cantor agrees that the “prevention of harmful interference . . . will require a minimum level of regulation” (Section 2.6 Consultation Document), Cantor does not believe that this argument holds water, for the following reasons:

(a) Technological Advances

Dynamic changes are taking place in today’s wireless marketplace as a result of advancing technology so that current interference concerns are reduced or eliminated (*e.g.*, the noise level from signals of mobile units has decreased dramatically). To the extent necessary, regulators could avoid interference by imposing power limits at geographic and frequency boundaries on the spectrum users.

(b) The Lessee Would Succeed to the Obligations of the Lessor

As stated above, spectrum trading could be implemented without delay by allowing licensees to lease their spectrum. Under such a framework, the lessee would succeed to the same obligations as licensees as to emission power limits, geographic area, and so on. A lessee will also succeed to the licensee’s rights to protection from interference by others, and the licensee’s obligations not to interfere with others. Transfer of rights without obligations or obligations without rights would not seem workable or sensible.¹⁴

To the extent there is special concern about highly congested areas, in these areas it is unlikely that there are significant amounts of unused spectrum, and therefore there will be few potential lessors of spectrum. In any case, by leasing out spectrum that it is not using, subject to

¹⁴ See Section 7.5 Consultation Document.

the passing down of interference avoidance obligations, a lessor would not increase interference concerns beyond those which would exist if it simply made full use of its license rights.

(c) Fast-Track Dispute Resolution Mechanism

Question 2 of the Consultation Document addresses the issue of enforcement. Cantor suggests that a licensee who is allowed to trade spectrum has an incentive to study the particular market and potential interference issues to avoid disputes and to guard the value of its investment.¹⁵ The establishment of a user database would enable the quick identification of interfering users. In the case of interference, national regulators should provide a fast-track dispute resolution forum of experts to resolve interference issues.

5. “Introducing Spectrum Trading Would Require A Major Revision Of The National Telecoms Law.”

Cantor submits that this is not true since spectrum can be leased and does not necessarily require an ownership transfer of the license per se. The “four variants of trading” that Section 6 of the Consultation Document identifies are incomplete insofar as they all assume that the “ownership” of the spectrum changes. As stated above, in Section D of our comments, this is not necessarily the case if spectrum is made available to a third party on the basis of a lessor/lessee relationship. The licensee remains the “right holder” under Article 5 EU Authorization Directive and the license holder for purposes of U.K. law, and there will be no ownership transfer, if:

- The user is contractually obligated to comply with the license rules and applicable laws and regulations at any time (e.g., not to cause interference with other spectrum users).

¹⁵ Therefore, Cantor agrees with the U.K. Government that “[w]here rights and obligations continue concurrently to be rights and obligations of buyer and seller, the buyer and seller could agree between themselves who would use the rights, or any sharing arrangements, so that they do not cause interference” (Section 7.5 Consultation Document).

- The use of the spectrum can be monitored by the regulatory authority (e.g., to impose interception measures) and by the licensee.
- The licensee is entitled to reclaim the spectrum if it is not properly used.

Therefore, it is not necessary to wait with the introduction of spectrum trading “until the EC Framework Directive has been implemented (Section 4.1 Consultation Document).

F. How Cantor Could Assist the Radiocommunications Agency/Ofcom

Cantor applauds the Radiocommunication Agency’s intention to explore and carry out ways of facilitating the development of secondary markets in wireless spectrum. Spectrum trading should become a reality in the U.K. as soon as possible. Cantor stands ready to support the Radiocommunications Agency by:

- Assisting in a work shop on Spectrum Trading;
- Trading simulations;
- Initiating a fixed term pilot program;
- Creating an online market tool for spectrum trading, and
- Developing standardized terms and conditions to implement spectrum trading successfully.

To sum up, Cantor believes generally that the rule on secondary spectrum trading should be guided by the principle that the market will best be served if arrangements are permitted with maximum flexibility. The legal framework for spectrum trading should be interpreted as broadly as possible to provide a maximum degree of flexibility for the market participants.

Radiocommunications Agency

October 7, 2002

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If there are any questions, please contact the undersigned.

Respectfully submitted,

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Telecom Services, LLC

cc: Brent Wilkins