Global Wireless Summit
Key Note Address by FCC Commissioner Kathleen Q. Abernathy
New York, New York – May 22, 2003
As prepared for delivery.

Good afternoon. I would like to say what an honor it is for me to be here today to talk to so many of the leaders in the mobile industry. Today I would like to take some time to talk to you about the FCC's efforts to ensure that our regulations and policies foster the development of new technologies by industry.

While I believe that technological innovation must come from industry, I believe that my job as a regulator is to ensure that the FCC adopts and implements rules and policies that provide a framework that allows that to happen or, at the very least, do not provide disincentives. In fact, I share the same philosophy as the voice in "Field of Dreams" – "if you build it, they will come".

However, I believe that FCC must not create an inflexible framework. Instead, the FCC must place its faith in the competitive marketplace and where it has the discretion refrain from regulation. As demonstrated by many of our most recent wireless items, I believe that such regulatory restraint is necessary in order to allow the competitive marketplace to foster technological innovations.

Today, I would like to focus on three major areas in the wireless arena where the FCC has been working towards a goal of creating a regulatory environment that ensures that innovators are able to provide the sorts of services that are responsive to the market. First, just last week the FCC adopted an order which established a secondary market for general wireless services. Second, also last week the FCC adopted an NPRM proposing to increase the amount of spectrum available for unlicensed wireless

technologies. This action builds on many recent efforts of the Commission to provide more spectrum for use by an increasingly greater range of services and technologies. And finally, the FCC has been actively working to introduce increasing flexibility into our service rules to ensure that companies can make the most rational decision on what technologies and services would best serve the market.

I would like to start by discussing an order we adopted just last week on secondary markets for wireless services. By allowing the creation of secondary markets, the FCC has ensured that innovative services can be developed and that spectrum is utilized efficiently.

Specifically, the order provides that wireless radio service licensees are able to lease spectrum to third parties using one of two approaches – either the spectrum manager leasing approach or the de facto transfer leasing approach. Under the spectrum manager leasing approach, parties may enter into spectrum leasing arrangements, without the need for prior FCC approval, provided that the licensee retains de facto control over leased spectrum. Under the de facto leasing approach, licensees and lessees may enter into spectrum arrangements in which de facto control of the leased spectrum is transferred to the spectrum lessees for the duration of the lease pursuant to streamlined approval procedures.

In addition, in this Order we revisited the Intermountain Microwave test used for interpreting de facto control under Section 310(d) of the Communications Act. Specifically, we found it appropriate to update our current standard to focus on whether the licensee exercises effective working control over the use of the spectrum it leases, as opposed to direct control of the facilities themselves. This long overdue updated standard is reflective of recent developments in the Commission's spectrum trends,

technological advances, and of equal importance, our ability to place increasing trust in the marketplace.

I believe that this orders strikes the right balance of regulation and reliance on the marketplace by giving certainty to the marketplace about the types of routine transfers that do not warrant and will not receive significant Commission attention, while, where there is greater concern, leases will receive increased scrutiny. In addition, there are certain incentives for compliance with the Commission's rules built into the system, such as enforcement actions, in the area of de facto transfers, review by the FCC of the lessees eligibility.

Taken as a whole, I believe that the impact of the secondary markets docket will be tremendous. This order will open the door to allow licensees to lease excess spectrum to third parties that best theirs and the individual lessee's needs, such as rural service providers. Another possible use of this spectrum is software defined radios. I believe that there are many other uses that we may not have thought of at the FCC and only innovators, such as you, hold the key too. Ultimately, this should result in increased spectrum efficiency and usage, resulting in improved service and new services to consumers.

In addition, in order to ensure that the FCC continues along these efforts, we adopted a further notice of proposed rulemaking which examines issues affecting the future development of secondary markets based on the regulatory framework we established in the order, including an examination of whether for other services, such as broadcast and public safety, it would be appropriate to authorize spectrum leasing. I believe that it would be appropriate in many cases to extend our secondary market rules to other wireless services and I look forward to reviewing the comments we receive in this proceeding.

The FCC has also recently focused on moving towards increasing the amount of unlicensed spectrum that is available for new entrants to provide telecommunications services. Today American consumers increasingly rely on unlicensed devices in their day to day work and home environments. For example, your cordless telephone, garage door opener and computer all operate on an unlicensed basis under the FCC's rules. In addition, many more innovative devices operating in the unlicensed bands are becoming commercially available. These include Wi-Fi which allows you to have wireless access from your computer to your ISP, and blue tooth which provides wireless connections between your mobile phone, PDA, and other devices, such as keyboards and earphones. Just last week I had the honor to participate in the NTIA Summit on Unlicensed Technologies and take a tour of the available technology. I have to say that I was quite impressed with what was out there [fill in].

In the unlicensed environment, the FCC does intervene to establish certain rules of the road to avoid harmful interference and allow multiple devices to operate in the same frequency band. The success of the unlicensed approach to spectrum regulation has been due in large part to the Commission's willingness and ability to clearly define the rules that govern the common use of this resource, while resisting the urge to impose heavy-handed regulation. This approach has encouraged capital investment, and in turn, new services have been introduced to the American people. Unlicensed bands, unlike the licensed bands, do not create property like rights, but rather focus on communal use. Accordingly, like drivers on the highway, all users must comprehend and obey the rules of the road and the FCC, as the regulator, must ensure its rules are clear.

The FCC is continuing to examine its current spectrum allocations to see if additional spectrum can be made available for unlicensed use. Most recently, the FCC affirmed its decision to

allow ultra-wide band devices on an unlicensed basis to be deployed in a large portion of the lower frequency bands. Ultra-wide band technology holds great promise for many applications including public safety. For instance, one company has developed a device that allows police officers to see through the walls of buildings to locate hostages. The Commission is also looking at additional frequency bands at 70, 80 and 90 MHz for other unlicensed devices.

The FCC recently has also been seeking to provide greater flexibility to wireless licensees through its service rules and licensing process. This approach will help companies be able to choose the appropriate technologies and services that best serve consumers. For example, in April the FCC adopted in April an order providing flexibility to public safety licensees in using the 4.9 GHz band for mobile and fixed broadband applications. Such flexibility will allow each public safety licensee to deploy systems in a manner that best serves the service and technological needs of their community. In addition, the FCC also provided a regulatory framework which promotes interoperability in which traditional public safety entities can pursue strategic partnerships with both traditional public safety entities, such as the Federal Government, 000and non-traditional public safety entities, such as utilities and commercial entities, in support of their missions regarding homeland security and protection of life and property.

Another key action which the FCC recently took was issuing a NPRM governing the service rules for MMDS and ITFS licenses. As you may remember, last year I talked to you about the importance of granting mobile flexibility to these providers to ensure that they could respond to consumer demands with the most appropriate service offerings. This past March, we issued an NPRM seeking comment on the creation of a regime that allows licensees even greater flexibility in creating service choices and permits more efficient use of the 2.5 GHz band. Ultimately, by

affording such flexibility, we should see more efficient utilization of the spectrum resource.

In sum, I believe it is imperative that the FCC continue to "build it" so that you, the innovators, will be able to provide the services that consumers demand. To do so, the FCC, as a regulator, needs to continue down this path of letting go and having faith in the marketplace as it drafts its rules and policies. Such faith requires the Commission to refrain from regulating where the market can do a better job and afford sufficient flexibility to its licensees to allow innovation. In the long run, this approach will best serve the public interest by getting out to consumers the largest selection of technologies and services.

Although there are many other issues we can discuss, I would like to stop now and take some questions from the audience, if there are any. Once again, I thank you for the opportunity to speak with you today.