

**PRESS STATEMENT OF COMMISSIONER**  
**MICHAEL J. COPPS**  
**Dissenting**

*RE: 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services (WT Docket No. 01-14) (Rel. November 8, 2001).*

I plan to release a somewhat lengthy but deeply felt response to the action this Commission is about to take. Here I will briefly summarize my thoughts on this issue. The development of the wireless industry is one of the true success stories of the telecommunications industry and good government policy. The spectrum cap, almost every wireless industry leader has told me, played an important role in making this happen. If the cap is to be repealed, there must be a comprehensive finding of the need for repeal and an analysis of the conditions that require such action and the public interest benefits to be derived therefrom. In almost every market in the country, companies have not reached the cap. In those areas where spectrum scarcity might develop over the next few years, surely the Commission could use waivers or lift current limits and do so without in the process stifling competition, encouraging industry consolidation and short-changing hard-pressed American consumers. Let's not kid ourselves -- this is, for some, more about corporate mergers than it is about anything else. Just look at what the analysts are talking about as the specter of spectrum cap renewal approaches: their almost exclusive focus is on evaluating the candidates for corporate takeovers and handicapping the winners and losers in the spectrum bazaar we are about to open.

Today's Commission approach is "Ready, Fire, Aim." We have not adequately analyzed spectrum exhaustion scenarios in the short or near-term. We have not adequately evaluated the prospects for economic concentration and the potential for wireless monopolies. We have not performed the extensive public interest evaluation required by statute and expected by Congress and which would include impacts upon small business, rural consumers, ownership diversity, efficient use of the spectrum and the encouragement of new technologies. Instead we simply remove the cap. And while we are encouraged to think of this as a measured action -- raising the cap now and repealing it completely in 2003 -- today's action is, in reality, tantamount to immediate repeal. This is because it takes some time for the players to jockey into position to reap the spectral harvest.

Spectrum is a publicly owned resource. It is therefore not surprising that Congress gave the Commission very specific responsibilities related to spectrum. In both the Budget Act and the Telecommunications Act of 1996, Congress instructed the Commission to promote competition, the efficient and intensive use of spectrum, diverse control of spectrum by a wide variety of entities, and to create simple rules and certainty in the marketplace.

The Commission responded to these responsibilities, in part, through the spectrum cap. The cap prevents concentration of spectrum that threatens competition, gives companies an incentive to maximize their spectral efficiency, and works to promote

diversity of control, serving as an easy and transparent method of doing Congress's will. The Commission repeatedly has found the cap to be in the public interest. Yet today the Commission eliminates the cap.

The majority properly does not rely on any argument of spectrum exhaustion. There is no record evidence that companies have even reached the current spectrum cap. I believe that increasing or altering the cap rather than eliminating it could alleviate future needs. Instead, the majority conducts its public interest analysis by examining only whether the cap is necessary to promote competition. I believe that statutory directives, previous Commission action, and the public interest require us to determine whether the cap supports not only competition, but also efficiency, diversity, simplicity, and certainty in the market. Because I believe that the cap is necessary in the public interest to support these Congressionally mandated goals, and especially because I am troubled by the prospect of dangerous concentration through mergers, I support continuation of the cap.

I would have been open to addressing the cap on a market-by-market basis in a manner that could have addressed the particular challenges of rural America as well as the particular circumstances of other markets. I also would have been open to exploring increasing the cap to a level that would have met our statutory responsibilities while providing more flexibility to wireless companies. But the stark choice presented to me is whether to eliminate the cap or to keep the cap. I must therefore respectfully dissent because I believe that eliminating the cap is contrary to the public interest.

I intend to release a full separate statement when the item is released.