

**DISSENTING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

*Re: Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31),
Auction of Licenses in the 698-746 MHz Band (Auction No. 44), Order, WT
Docket No. 99-168, GN Docket No. 01-74*

I respectfully dissent from the Commission's decision not to grant CTIA's petition to delay the auctions for the entire 700 MHz band. I believe the public interest would best be served by delaying the 700 MHz auctions to allow the Commission time to develop a more comprehensive approach to these spectrum issues.

The Commission has previously concluded that it has the authority to delay the 700 MHz auctions, so long as a delay would further our "statutory mandate to design our auction rules and procedures so as to manage the radio spectrum effectively and efficiently in the public interest." *Cellular Telecommunications Industry Ass'n et al's Request for Delay of the Auctions in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000 (Auction No. 31)*, Memorandum Opinion, 15 FCC Rcd 17,406 ¶ 6 (2000) (Commission deciding to delay the auction for the upper 700 MHz band). Today's Order does not alter this conclusion, and, in a companion item released today, the Commission once again postpones the upper 700 MHz auction, this time for another seven months.

I believe the public interest would best be served by delaying the 700 MHz auctions indefinitely. The Commission is currently involved in a number of other proceedings involving complex spectrum management issues, such as our proceeding to identify additional spectrum for advanced wireless services and our proceeding to improve public safety communications in the 800 MHz band. In my opinion, we should consider these issues in a more comprehensive manner before proceeding with the 700 MHz auctions. A delay would also allow the Commission to shed light on the considerable uncertainty concerning when the spectrum in this band will actually become available to public safety and commercial users. The pathway to the transition to digital television – which would allow the spectrum in the 700 MHz band to become available – is unclear at best. While the Commission has allowed voluntary mechanisms for relocating incumbent broadcasters, we do not know whether and when such measures will bear fruit. And there remain outstanding issues here at the Commission, such as the pending short-spacing applications by some stations in the upper 700 MHz band, that will impact the transition. Members of Congress, the administration, and the public safety community have called for a delay of the 700 MHz auction for many of these same reasons.

I support the Commission's decision, in the companion item, to postpone the upper 700 MHz band auction but would have preferred to delay auctions for the entire 700 MHz band. I agree with one of the Commission's goals in that item – "to provide additional time for Congress to consider legislation" addressing these spectrum issues. I am troubled, however, by the implication that we are placing a deadline by which

Congress must act. As I indicated above, the Commission has already determined that it has the authority to delay this auction. Particularly in such circumstances, the Commission should not impose artificial deadlines on congressional action. I thus would have preferred merely to announce that the auctions would be delayed at this time. Accordingly, in light of all of these considerations, I disagree with the Commission's decision to deny CTIA's petition requesting a delay.