

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN,  
APPROVING IN PART AND DISSENTING IN PART**

*Re: Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31) Postponed Until January 14, 2003, Auction of Licenses in the 698-746 MHz Band (Auction No. 44) Will Proceed as Scheduled, Public Notice*

I approve the Commission's decision to delay the upper 700 MHz auction and dissent from its decision to proceed with the lower 700 MHz auction as currently scheduled for June 19, 2002. I believe the public interest would best be served by delaying both 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). This item does not alter this conclusion.

I believe the public interest would best be served by delaying both 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 to postpone the upper 700 MHz band auction but would have preferred to delay auctions for the entire 700 MHz band. In addition, although I agree with one of the Commission's goals in this item – "to provide additional time for Congress to consider legislation" addressing these spectrum issues – I am troubled 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.