

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

Re: Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, Report and Order, WT Docket No. 01-108

I support this Order, which modifies or eliminates a number of our Part 22 rules pursuant to the biennial review mandated by section 11 of the Communications Act. I concur, however, with respect to the Order’s discussion of the legal standard for Section 11’s biennial review. I also write separately to emphasize my support for ensuring that people with hearing disabilities have sufficient access to wireless services.

Section 11 requires the Commission to review its regulations for providers of telecommunications service every two years and to “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” 47 U.S.C. § 161(a). The provision then mandates that “The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.” *Id.* § 161(b).

While I agree with much of the Order’s discussion of Section 11’s legal standard (*see* Order ¶ 4) – as well as the Order’s application of the standard to the regulations at issue – I am concerned by the Order’s failure to discuss the meaning of the term “necessary” in Section 11. In a similar context, the Commission has argued that the term “necessary” means only “useful” or “appropriate.” *See* FCC’s Petition for Rehearing or Rehearing *En Banc, Fox Television Stations, Inc. v. FCC*, Nos. 00-1222, *et al.*, 2002 WL 1343461, at 5 (D.C. Cir. Jun 21, 2002) (“Terms such as ‘necessary’ and ‘required’ must be read in their statutory context and, so read, can reasonably be interpreted as meaning ‘useful’ or ‘appropriate’ rather than ‘indispensable’ or ‘essential.’”). As I have argued elsewhere, I believe the term “necessary” should be read in accordance with its plain meaning, to mean something closer to “essential.”¹ But at the very least, I think the Commission should clarify that the term means something more than merely “useful” or “appropriate.” Accordingly, I concur in the item’s discussion of Section 11’s legal standard.

I also wish to note my support for ensuring that people with hearing disabilities have sufficient access to wireless services. Currently, hearing disabled people must generally rely on analog wireless service, because most digital phones cause interference to most hearing aids and cochlear implants. For this reason, among others, the Order

¹ *See* Separate Statement of Commissioner Kevin J. Martin, *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, WT Docket No. 01-184, CC Docket No. 95-116 (adopted July 16, 2002); Separate statement of Commissioner Kevin J. Martin, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, Report and Order, CS Docket No. 01-290 (adopted June 13, 2002).

leaves the requirement that cellular carriers provide analog service in place for another five years. More importantly, the Order makes clear that – even after the five-year period – the Commission will not eliminate the analog requirement if hearing-aid compatible digital devices are still not available. This latter point was fundamental to my support of the item.

Ultimately, however, the Commission must ensure the availability of digital phones that are compatible with hearing aids and cochlear implants. Fixing the digital compatibility problem, rather than relegating the hearing disabled community to analog phones, is the real solution. I thus look forward to tackling that issue and completing our proceeding under the Hearing Aid Compatibility Act of 1988. Completing that proceeding should be, and is, a priority for the Commission.