

## STATEMENT OF CHAIRMAN MICHAEL K. POWELL

*Re: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands (adopted January 28, 2003).*

*Re: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (adopted January 28, 2003).*

Today the Commission releases a family of orders that grants flexibility to licensees that provide substantial satellite service, strictly enforces our satellite milestone policies, and reallocates 30 MHz of spectrum for terrestrial use. Taken together, these orders reflect the Commission's commitment to vigorously guard the public's spectrum resource and to ensure that resource is used efficiently in the public interest. In addition, these orders will further increase the portfolio of spectrum-based services emerging as viable competitors in the voice and broadband marketplace. While I believe today's orders represent the optimal outcome under the constraints of the existing licensing regime, they also highlight areas of our current spectrum policy that warrant particular attention, from the Commission and Congress, if we are to maximize the public interest in spectrum policy.

First, we grant existing satellite providers in three bands the option of using their spectrum assignments on the ground as well as in space. Under our traditionally bifurcated licensing regime, satellite and terrestrial spectrum rights have been assigned independent of one another. In some cases, assignment of either satellite or terrestrial rights effectively barred the assignment of the other because of interference concerns. Advances in technology have changed some of these assessments. Sharing is now often possible between satellite and terrestrial, fixed services. Indeed, in cases where the services are severable, the Commission has decided to license the rights to different parties. In other cases, the capacity of two independent services to share is far more limited.

In the bands at issue here, the satellite-based services as well as the proposed terrestrial services are mobile, making sharing less feasible. Moreover, the satellite services are already licensed and, in two of the three bands at issue, satellite licensees are already offering service. In the end, I concluded that granting additional rights to existing satellite licensees best protected those services from harmful interference and ensured the spectrum currently allocated to satellite services in these three bands was fully utilized. The dissent argues that the Commission should have sought additional comment on our authority to assess a fee on satellite licensees who would be granted these additional rights. As an initial matter, it should be pointed out that the Commission already sought comment in this proceeding on that very issue. Further comment seems unproductive. However, I concur in the recommendation of the Spectrum Policy Task Force that Congress consider granting the Commission fee authority. Authorizing such fees would provide the Commission with an important tool for ensuring efficient use of the public spectrum resource.

Second, today's orders emphasize the importance of milestones in our satellite licensing regime. The Commission has long acknowledged that satellite-based communications present unique challenges. Specifically there is often a tremendous lag time between the filing of an application and the actual provision of service. The ITU satellite filing and coordination regime further complicate this process. The time and regulatory resources involved strongly counsel in favor of policies that ensure satellite spectrum goes to providers committed to using the spectrum promptly. Strict enforcement of milestones ensures this result. We will continue to be vigilant that satellite licensees fulfill their obligations to build systems – or the spectrum will be returned and re-licensed. Adherence to the obligation to construct new systems also advances our goal of multiple, facilities-based competitors in all sectors of the communications marketplace, including satellite services.

While milestone enforcement is an important policy, the Commission is also examining its satellite policies in a broader context to determine whether our processes unduly hinder market access, and thereby limits competition in voice, broadband, and other markets. The Commission is currently reassessing its satellite licensing regime to determine what improvements can be made. Our current system takes much too long and makes the challenges associated with launching and operating a satellite service all the more complex. Satellite providers should succeed or fail in the marketplace on their own merits – not to have their business plans atrophy on the shelf while the FCC takes years to issue a license. We can and must do better.

Finally, the Commission today reallocates 30 MHz of spectrum at 2 GHz previously allocated for satellite use. The Commission also seeks comment on reallocating additional spectrum in the Big LEO band. These actions are not taken lightly. However, I believe that the highest-valued use of this spectrum is no longer for satellite service, and it is more prudent to explore other uses.

Going forward, it would be best if the Commission were not called upon to make such command-and-control determinations. If, for example, Congress were to repeal the international satellite competitive bidding prohibition in the ORBIT Act as the Task Force recommended, the Commission would be able to adopt a flexible allocation including satellite and terrestrial uses. If mutually exclusive applications were then accepted for filing, the resulting auction would allow the marketplace – rather than the Commission – to decide the highest valued use of the spectrum in question. I believe such an outcome would maximize the public interest and, accordingly, ask Congress to consider allowing the FCC the option of distributing flexible spectrum rights via auction.

Once the Commission determined that 30 MHz of satellite spectrum at 2 GHz would be reallocated, we faced the challenging task of selecting the appropriate bands. One of the most difficult aspects of that decision was to reallocate 10 MHz of globally harmonized spectrum at 1990-2000 MHz. Globally harmonized spectrum is a vital resource and we remain committed to the ITU process and the goals of global harmonization. However, the United States had years ago determined that the 1930-1990

band would be used for PCS. That service succeeded beyond our greatest expectations. Although during this period the Commission had yet to issue 2 GHz satellite licenses because of continuing international allocation issues, it had established certain technical operating parameters. As we came closer to a decision in these proceedings, it became increasingly clear that there would be interference issues between the PCS providers at 1930-1990 and satellite operators above 1990. The resulting interference may well have jeopardized the reliability and success of each service. Thus, although I highly value internationally harmonized operations, I determined that the ability of both services to operate reliably outweighed international concerns in this circumstance. Although I am disappointed that both interests could not be accommodated, I believe in the end stronger satellite and terrestrial services will result.

The decisions we reach today are significant and complex. The Commission's talented staff deserves credit and recognition for the long hours and tireless efforts that culminated in these orders' adoption. Together their efforts will allow for more efficient utilization of the spectral resource, the development of innovative service offerings, and more diverse and competitive alternatives for consumers throughout the country.