

STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Dissenting

RE: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; Report and Order and Further Notice of Proposed Rulemaking (WT Docket No. 00-230).

I continue to believe that a well-regulated secondary market in spectrum could lead to more efficient and intensive use of spectrum, and, with new technologies like software designed radio, could assist in bringing innovative spectrum uses to the public. Yet I run into the same problem here that I did last year with the earlier secondary markets item: while there may be policy justification for some of this, there is no legal justification. I believe approval of this item contravenes Section 310(d) of the Communications Act.

In Section 310(d), Congress makes clear that no “station license or any rights thereunder shall be transferred, assigned or disposed of in any manner . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.” But the Commission’s ever-expanding secondary market’s policies allow licensees to transfer a significant right – the right to control the spectrum on a day-to-day basis – without applying to the Commission and without the requirement of any Commission finding that such transfer serves the public interest.

My dissent to the original Secondary Markets Order includes my full legal argument on this point and I won’t repeat it here. But because I believe that the Commission’s overall scheme is disallowed by the Communications Act, I will dissent.