

**STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

Re: Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services; WT Docket No. 03-103

I remain very optimistic about the prospects of broadband in the sky. As a frequent traveler, I look forward to the day that I can take advantage of time in the air to upload my latest speech, catch up on e-mail, or maybe even do some on-line shopping for one of my children's upcoming birthday. For so many travelers, these new services will increase their productivity and enhance their quality of life.

When we adopted the initial Report and Order in this proceeding almost a year ago, I expressed concern that we had lost a golden opportunity to guarantee true broadband competition in the air by requiring that two providers have access to the larger three megahertz licenses. Instead, we proffered a number of different band plans under the mantra of "let the market decide." Unfortunately, this regulatory punt could result in the incumbent narrowband provider, Verizon Airfone, securing the exclusive three megahertz license, which would allow the company to occupy the entire block of 800 MHz Air to Ground (ATG) spectrum for the next four years. This is enormous power over the future of ATG service if left unchecked.

It is important to put this in context. Notwithstanding the availability of satellite broadband services, we currently have very little, if any, broadband services available on U.S. airplanes because of the size and expense of satellite broadband services. Our decision last year, from which I dissented in part, failed to guarantee a truly competitive broadband market in the ATG service. Moreover, if Airfone wins the exclusive three megahertz license, it will control the four megahertz of 800 MHz ATG spectrum for the foreseeable future. To make matters worse, our only real hope for competition in the broadband market may be the holder of the one megahertz 800 MHz ATG license, and Airfone may have the ability to block that new entrant from entering the market until May 2010.

I am pleased that my colleagues agreed to put in place rigorous reporting requirements on Airfone to help us provide oversight to prevent unnecessary delays in its transition from a four megahertz narrowband system to a one megahertz system. This should give potential bidders some comfort that the Commission will be monitoring the pace of transition, which we will need to do effectively. Also, in the event Airfone, or one of its affiliates, wins the exclusive three megahertz license, we will put in place a second set of reporting requirements to ensure that the company swiftly migrates its narrowband system to a broadband one. The one megahertz licensee may be our only hope for any type of broadband competition. If at all possible, we should try to get the spectrum in the hands of that company as soon as possible. If Airfone has essentially completed its migration from narrowband to broadband, there is no reason to allow it to retain the one megahertz license for the full five years. I will keep a close eye on these reports, and I hope all of my colleagues will as well.

Ultimately, we could have taken a number of more specific actions to support competition in the event Airfone wins the exclusive three megahertz license. But we fail to do so today. For that reason, and for other statements made in this item that rely on the portion of the original Report and Order from which I dissented, I must concur in part to this decision.