

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures; Further Notice of Proposed Rule Making; WT Docket No. 05-211*

I strongly support this Further Notice and its tentative conclusion that the Commission should limit the ability of designated entities (DEs) who have a material relationship with the nation's largest wireless carriers from having access to bidding credits in future auctions. But I am very disappointed that it has taken so long for this item to be adopted. The Commission committed to launch this proceeding at our August 2005 Open Meeting, yet it took over five months to prepare this relatively brief notice of proposed rule making.

The upcoming Advanced Wireless Services (AWS) auction will be a landmark event for the Commission. It represents the first auction in almost 10 years of a nationwide footprint of spectrum ideal for mobile wireless services. There is a great deal at stake both for carriers interested in creating new services or expanding old ones and for the Government, which has authorized the relocation of federal users to make room for these commercial services. This also is the first auction subject to the Commercial Spectrum Enhancement Act, which requires that auction proceeds must be sufficient (at least 110 percent) of estimated relocation costs of eligible federal entities.

I have repeatedly stated my commitment to try to avoid unnecessary delays to the AWS auction. I also believe we should do whatever we can to conclude this proceeding as quickly as possible. Of course, we have lost a great deal of time since the Commission first committed to launch this proceeding. I am frustrated that the lack of timely action may unnecessarily create challenges and some uncertainty as interested parties both respond to this item and prepare for the upcoming auction. I cannot emphasize enough that this timing was not of my choosing. We should have initiated this proceeding three months ago and allowed interested parties a more rational amount of time to comment on our proposals. Unfortunately, that didn't happen and now commenters and indeed our own Commission staff are forced to work within an incredibly aggressive schedule to try to finalize this proceeding sufficiently in advance of the June 29, 2006, AWS auction date.

Whatever the status of this proceeding at the time of the AWS auction, I want to put all interested parties on notice that I will personally review any agreements through which one of our nation's largest wireless companies partners with a DE that is seeking to use bidding credits in the AWS auction. I am not interested in excluding companies from participating in the auction, but I am concerned when large wireless carriers gain indirect access to bidding credits. I will rigorously enforce whatever rules and policies are on the books at that time.

The issue of DEs partnering with the largest wireless carriers is particularly important given the dramatic scope of consolidation in the wireless industry over the last 18 months and the ever-increasing market share of the largest carriers. It has been reported to us that in 1998 the five largest wireless carriers controlled 48% of the market; in 2005, the top five carriers

controlled almost 90% of the market. Also, the AWS auction could raise \$15 billion dollars by some estimates for the federal Government at a time our budget is under ever increasing pressure. Do we really want the nation's largest wireless carriers partnering with DEs to get a 25% discount so that auction revenues to the U.S. Treasury could potentially be reduced by billions of dollars? How is the public interest served in that outcome?

Finally, with respect to the specific proposals in the Further Notice, I want to let commenters know that I do not necessarily support the decision to expand the original scope of inquiry from large wireless carriers partnering with DEs to the broader "entities with significant interests in communications services" as that term is defined in the Further Notice. At a time of significant consolidation in the wireless industry, the DE program indeed may be an appropriate opportunity for smaller wireless providers, with the backing of non-wireless companies, to build new networks to compete with large wireless incumbents. While I look forward to reviewing all of the comments on the Further Notice with great interest, I will be particularly interested in pleadings that address this specific aspect of the item.