

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

*Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Order on Reconsideration and Fourth Memorandum Opinion and Order, and Third Memorandum Opinion and Order and Second Report and Order; WT Docket No. 03-66 et al.*

With this omnibus item, we move another step closer to the widespread deployment of wireless broadband services in the 2.5 GHz spectrum band. It's taken a little longer than I hoped, but we are finally clarifying the set of rules that should accommodate future innovative technologies offered by Broadband Radio Service (BRS) and Educational Broadband Service (EBS) operators and facilitate the provision of advanced spectrum offerings. We are establishing a policy regime that will bring these the EBS and BRS services squarely into the 21<sup>st</sup> century.

When we adopted the underlying Order in this proceeding back in June 2004, I expressed my disappointment that the Order adopted a transition process that was based on major economic areas (MEAs) instead of smaller markets. I was concerned that the obligation to transition an entire MEA would make it exceedingly difficult for proponents to effectuate transitions in their particular market. While it is small comfort to be proven right when it comes to broadband deployment, it is telling that not a single transition plan has been filed in the almost two years since that decision was made. That is why I am so pleased that in our item today, we reverse this earlier decision and agree with a large number of commenters to implement transitions by Basic Trading Areas (BTAs) rather than MEAs. For the foreseeable future, I believe that BRS and EBS services will be local ones, and our decision to adopt BTAs as the transition market should make it a lot easier for proponents to effectuate transitions and start rolling out broadband services.

While much has been said in the record over the past several months about the length of leases between EBS and BRS licensees, I am very pleased to support the compromise advanced by the Wireless Communications Association and the Catholic Television Network that we ultimately adopt in this item. This compromise is a significant one and will enable educational and business entities to engage in meaningful partnerships that ultimately will lead to the deployment of wireless broadband networks. There is so much potential in the 2496-2690 MHz band and this compromise will enable educators, as well as commercial operators, to take full advantage of the opportunities presented by the latest technologies.

I am excited about the future use of the spectrum for broadband services, both commercial and educational. Broadband has the power to transform the lives of individuals and the future of communities. But these networks won't come cheap, and it was critical that parties could come together and find common ground so students and educators can also benefit from the deployment of these state of the art facilities.

On a different subject, I have lingering concerns about our treatment of existing BRS operators who are interested in “opting-out” of the Commission’s transition plan. These service providers have complied with our rules for many years, and have deployed digital video (and sometimes even digital broadband) systems that ably serve their respective communities. While there was not sufficient support to move beyond the waiver language that we adopted in our last item, I have tried to provide these BRS operators with some improved structure by advocating an automatic grant provision for those parties that filed waivers for opt-out that went unopposed. I am disappointed that we ultimately were unable to provide these operators with additional certainty but am pleased we make commitments to review these waivers expeditiously.

Finally, I have concerns with that portion of the item addressing construction requirements of the EBS/BRS services going forward. I have long had a strong interest in promoting active spectrum use and was pleased to work with Sprint and Nextel this past fall to secure significant build out commitments from the companies for their BRS/EBS spectrum holdings in association with their merger Order. I think we have a real opportunity in our decision today to further jumpstart wireless broadband efforts in the 2.5 GHz band by adopting “safe harbors” that are meaningful. Safe harbors are just that – they are not a requirement; parties are not obligated to meet them. A safe harbor is non binding, but if met, it provides operators the security that they absolutely have complied with our substantial service requirements. But if we are to provide that security option by adopting safe harbors, we should make them worthwhile. Operators already are providing significant wireless services in these bands today, so meeting the enhanced safe harbors that I proposed clearly was possible.

I want to thank the staff of the Wireless Telecommunications Bureau and the International Bureau for all of their time and hard work spent on the second massive item in this monumental proceeding. This Order represents another important step by the Commission to ensure that providers continue to have opportunities to deploy broadband wireless so that all consumers across America have access to the best communications possible.