

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Report and Order and FNPRM

The upcoming 700 MHz auction is perhaps the most important this Commission will ever conduct. When it comes to spectrum, to paraphrase Mark Twain, "they aren't making any more." And the soon-to-be freed-up 700 MHz variety is among the most valuable spectrum of all because of its uniquely favorable propagation characteristics.

So the stakes here are high—very high. If we do our jobs correctly, this auction will deliver countless benefits to the American people as well as billions of dollars to the U.S. Treasury. It will enhance our readiness for the next disaster and inject some much-needed competition into the market for broadband services across the nation (especially in rural areas). But if the Commission fails at its task, then we will have wasted one of the best opportunities in recent memory to improve the way our nation communicates, develops and protects itself. We will never have another chance like this one.

Let's begin with the question of public safety which is, as you have often heard me say, the first obligation of the public servant. In a more perfect world, our nation's first responders would already have access to a cutting-edge, custom-built, interoperable and fully-funded broadband network that makes use of dedicated public safety spectrum. After all, it has been over half a decade since 9/11 and we are coming up on the two-year anniversary of Hurricane Katrina. Both tragedies were greatly—and unnecessarily—compounded by flaws in our public safety communications system. And yet we are not appreciably closer to a solution today than we were back then. This is a failure—a truly monumental national failure—that I believe will come to haunt us in the years ahead.

It is against this background of missed opportunities and an unacceptable status quo that we must consider a recent, late-filed proposal to create a nationwide, interoperable, public-private broadband network in the 700 MHz band. The basic idea is a network that will be used by both commercial *and* public safety users, with commercial users generating enough revenue to build and operate the network and with public safety users able to preempt commercial users (either in whole or in part) during an emergency. It's a tantalizing prospect—but *only* if it works as promised. And there's the challenge.

So let me be crystal clear right up-front: I am not at all sure that a dual-use network along the lines proposed here will actually deliver public safety users the network they so desperately need and deserve. While I certainly support putting this proposal out for comment, even at this late date, I am going to approach it with a skeptical eye. Put simply, I will need strong assurances—much stronger than any we have been provided thus far—that the plan will *actually work* before I can support it. And by work, I mean *work for public safety*. I'm talking about an interoperable network—*built and configured to public safety standards*—that police officers,

firefighters, EMS technicians and other first responders all across the nation can actually afford to use. And I mean a system that is managed and maintained with a clear public safety priority, with the hard preemption and other calls made by those entrusted with ensuring the public safety. Let's focus on these issues in some detail.

To begin with, a public safety network is a fundamentally different beast than a commercial network. It requires greater reliability and interoperability, as well as a substantially different architecture, than traditional cellular networks. We've all felt the frustration and annoyance that comes when our cell phone drops a call. But for a first responder or a person in distress, a dropped communication can quite literally be the difference between life and death. Ninety-five or ninety-six percent reliability just isn't going to cut it here, nor are weather- or disaster-related outages. We should be demanding the wireline system's famous "five nines"—99.999%—or better. To take a second example, we also all know how complicated it can be to organize a conference call with a handful of colleagues. But first responders need instantaneous communication with extensive talk groups at the scene of a major disaster—groups that can contain several hundred officers from dozens of different jurisdictions and services. I am unaware of any commercial network that is designed to provide such a feature. And public safety users need to be able to communicate directly from handset to handset, even if a central cell tower has been knocked down. Again, this is not a feature that commercial operators typically provide.

A public safety network also needs to be ubiquitous, or as close to ubiquitous as is practically feasible. First responders don't lose the need to communicate just because they are on a distant farm, an underground urban parking garage, or some other remote location; if anything, the need is even greater. Commercial build-out schedules are simply not appropriate here. So in any plan that is adopted I will be looking for strong assurances for an accelerated build-out schedule.

Here is another imperative that we might as well face up to right here. No plan is going to work without the close, ongoing oversight and enforcement authority of this Commission. The commitments made here are commitments that have to be met. This isn't about voluntary best efforts that may or may not culminate in real-world results at some future date—this is about getting an essential job done right and done on time. Achieving just the right balance in the management and oversight of this dual-use system and making sure it is flexible enough to jump from one purpose to another instantaneously will require unprecedented and historical coordination and cooperation. Just hoping that effective decision-making will fall into place between commercial and public safety partners who have different strengths, different histories and different levels of influence does not provide the kind of guarantees needed here.

And then, of course, there is the issue of money. The proposal we are considering here would give public safety users a binding legal right to access spectrum on a preemptible basis—but for a price. This brings to mind Anatole France's bitter observation about how the law in its majesty forbids both rich and poor from sleeping under bridges. The fundamental question here is whether public safety users will be able to *afford* to exercise their right to access the network. The network we're talking about cannot be just a luxury item available to a few first responders whose budgets allow them to use costly services—it needs to be something that public safety

users, all across the nation, can afford to use on a regular basis and to rely upon as one of their basic forms of communication. Cash registers and toll booths don't belong at the heart of our nation's public safety planning. I approach these questions with special skepticism because I've seen too many companies, many with genuinely good intentions, promise to abide by a slew of special public interest conditions when they are seeking a license. But then, a few years down the road—and after a change in management or sometimes just a change in attitude—they suddenly develop an overpowering interest in reducing costs and increasing profits beyond the level that their original commitments would allow. When this seemingly inevitable shift occurs, the commercial operator will face strong pressure to cut back on the costly features that public safety demands and to start charging higher prices that commercial users but not public safety users can swallow. For this reason, I think that the FCC must—at a minimum—maintain strong and ongoing oversight of any for-profit corporation that is charged with maintaining a public safety network.

I also have concerns about whether preempting commercial users in favor of public safety users during times of emergency could have unintended and possibly dangerous consequences. For example, consider the tragic possibility of someone trapped under a building who cannot call for help because his or her cell phone relies on spectrum that has been preempted for exclusive use by first responders. Or consider how preemption might impact the ability of commercial end users to contact colleagues and loved ones in the aftermath of a crisis. I recognize, of course, that communications bandwidth will inevitably become a scarce and precious resource during an emergency and that first responders have a unique claim to priority in such situations. But at the same time, we need to think about whether it may be feasible to give some degree of priority to certain commercial communications—such as calls to 911—as well as about the wisdom of adopting a plan that could give commercial end-users a false sense of security about technologies that will become unavailable at exactly the times they are most needed.

I am pleased that today's FNPRM seeks comment on some of the issues I have just discussed, as well as others such as the potential inclusion of satellite technologies in any viable public safety proposal; how best to manage cross-border interference issues; and whether the Commission should adopt anonymous bidding procedures. I also am pleased that we ask general questions about how the “open-access” proposals made by some might encourage the development of a sorely-needed wireless “third pipe” in the broadband market. And though today's item does not seek specific comment on every conceivable aspect of the proposal, I would welcome and encourage interested parties to offer their thoughts on whatever other considerations they deem relevant, including the possible unintended consequences of allowing public safety users to preempt commercial users; on what lessons the Commission should draw from the experiences of other countries (like the United Kingdom) that have considered or adopted public-private spectrum sharing initiatives; and on what level of detail and specificity the Network Sharing Agreement should go into about network design and cost/revenue sharing between the commercial licensee and public safety users.

It took a while and it took some doing, but I think this notice now proceeds in a good and measured way regarding band plans. We make no conclusions here, final or tentative, but instead tee up a number of options. I wish we had a Commission-wide consensus plan right

now, but we don't. The options presented in the item provide, however, reasonable parameters for final Commission decision-making. I have put forward ideas to achieve a fair and balanced approach. As I have noted several times, I think that the Commission should offer a wide variety of geographic license sizes—just as we did in last year's AWS auction. This is the appropriate way to balance the competitive goals of the auction. Small and medium license sizes play a critical role in encouraging participation among smaller and rural wireless companies. At the same time, larger license sizes can permit new entrants—such as high tech entrepreneurs and satellite providers—to offer broadband on a nationwide basis. One size doesn't fit all, and I am convinced that we can put together a final plan making room for a multiplicity of interests.

Certain it is that we desperately need a third broadband pipe to challenge the current telco-cable duopoly in our metropolitan areas, as well a *first* broadband pipe in many rural areas. It is this duopoly and lack of rural availability that have caused the United States to continue its slide in the world when it comes to broadband—witness the OECD ranking that came out just the other day taking the United States from 12th to 15th among the nations. And as I have noted before, I don't think any of us should be relying on wireless companies owned by wireline broadband providers to provide this much-needed competition. So coming up with a good, progressive auction strategy is a good step forward—maybe one that can actually produce a new entrant into the broadband market—but don't mistake what we are talking about today for anything like the sort of comprehensive broadband strategy that our country so desperately needs. I guess that will await another day.

Finally, I am pleased with our proposal that the 700 MHz licenses be subject to strong performance requirements for network build-out. A license to use the people's airwaves is a public trust—and we must not countenance spectrum warehousing or any other unreasonable delay in putting this spectrum to work. However, even as we seek to provide licensees with a firm incentive to make use of spectrum, we also need to make sure that we do not unfairly punish licensees—especially in rural areas—who cannot engage in aggressive build-out for perfectly good economic reasons. I look forward to reading comments from the parties on this important issue.

I want to thank all my colleagues for their hard work on this item; various stakeholders who have already contributed input into our deliberations; and the Bureau for working late into the night on several occasions to start us down the road on one of the greatest challenges we've ever confronted. I also thank the Bureau in advance for what I know will be its hard work to develop final service rules for this granddaddy of all auctions, hopefully by June of this year.