

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
Concurring in Part, Dissenting in Part**

Re: *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Third Further Notice of Proposed Rulemaking, PS Docket No. 06-229.*

Our decision today to propose revised rules for the establishment of a mandatory public/private partnership in the 700 MHz band represents a compromise in large part. With this second bite at the apple, we have, in some respects, admirably provided more detail to better inform potential bidders as to the structure and specifications of a nationwide interoperable broadband network. I am pleased we are following the suggestion that I strongly advocated to proceed with a *Further Notice* before going to final rules.

Given the vagaries upon which many of the proposals here are based, it is especially critical that we put this out for comment before finalizing it. Rather than relying on much needed independent technical and financial expertise, we have handed down a host of tentative conclusions that reflect disparate comments from interested parties.

As all of us know, broadband infrastructure and broadband networks are offering unprecedented opportunities for improving and harmonizing the capabilities of our public safety community. Increasingly, law enforcement agencies are demanding real-time, wireless access to mission-critical information on the field – a vital component to improving the responsiveness of first responders. With advancements in wireless technologies and the ability to offer an increasingly wider range of services and at faster speeds, our public safety community is eager to take advantage of the expanded capabilities these technologies bring. From surveillance videos, to the transmission of photos and other critical data, broadband infrastructure and broadband networks offer unprecedented opportunities for improving and harmonizing the capabilities of our public safety community.

Yet in spite of these opportunities, our nation's public safety users remain on outdated systems that have not kept pace with the IP evolution taking place on commercial systems. Indeed, many states continue to operate under a patchwork system of incomplete technology solutions that do not enable first responders to communicate efficiently and effectively nor do they have the capabilities to transmit critical data at any time and place.

In the face of these opportunities and challenges, the Commission is charged with gathering all it can at its disposal to realize an interoperable network for public safety to ensure that we are promoting the "safety of life and property." Given our responsibilities in this regard, it was my hope this time around to generate a set of rules that provided real

incentives and laid the groundwork for building the most advanced and interoperable nationwide network possible through a careful balance of flexibility and conditions that were laid out clearly and explicitly upfront.

Instead, while I believe we have taken a measured step forward by putting out this Third Further Notice, I remain concerned that our proposed rules are not buttressed by sound outside expert advice on the myriad of highly complex technical and cost issues presented. Though I am pleased we put out detailed plans, I simply do not agree with all of them. In the end, I fear we have crafted a set of blueprints on the basis of a few interested contractors, without having solicited the expertise of architects and engineers.

Admittedly, attempting to resurrect a public/private partnership out of the ashes of the last auction is fraught with difficulty. I thank the Chairman and all of my colleagues for their good faith effort to meet that challenge. Unfortunately, this attempt falls short. It is not based on a solid economic or technical analysis that gives me sufficient confidence that we have assembled the elements for a successful auction. I am concerned that our efforts here, however well meaning, are yet another a shot in the dark.

For example, the item before us contains no analysis of the cost of building out the alternative approaches, the value of the spectrum, or revenue projections based on the prices we assume here. It would appear that some of the numbers that are suggested are based on educated guesses as opposed to solid evaluations based on independent expert analysis. We would have been better served to have followed Commissioner Copps' suggestion that we retain expert analysts, both technical and financial, which would have helped with such a monumental undertaking.

Without this basis, we have no way to determine, for example, whether such a large upfront minimum bid requirement of \$750 million permits a sustainable business model, or dooms this enterprise to failure from the outset. There is no analysis provided in the item to explain this number. We are offering for sale a valuable asset, but not one of unlimited value. And we are expecting major investments to be made by private enterprise to meet the needs of public safety. Despite these hurdles, we have not undertaken to assess whether the costs we are asking the private sector to bear have any relationship to the returns it can expect. I would have preferred to see much of the amount that will go to the minimum bid to go to building out the network rather than paying for the spectrum.

Particularly in light of the unprecedented credit crunch facing our nation's economy, it is irresponsible for an expert agency to pull numbers out of thin air that generate revenue for the Treasury but deprive the private sector of the means to accomplish our ultimate goal of a viable public safety network. Our first priority should be helping our first responders, not raising money. Some might say that such an astounding sum is necessary to ensure bidders are serious. We have done no analysis to see whether \$750 million or \$100 million or any other number would have been sufficient. If we had opted for \$100 million, to pick an example, the bidder could have put \$650 million more into the network for public safety. While I appreciate that the

majority has agreed to seek comment on a lower amount, I cannot put my vote behind such a high figure arrived at so arbitrarily.

Similarly, I cannot support the tentative conclusion regarding the tiered final benchmark for performance requirements. The proposal is taken out of whole cloth from the suggestion of one interested party, with no independent analysis on our part. We are consigning Rural America to second class status based on the preferences of one commercial company that presumably wants to bid and minimize its costs to maximize its profits. While that is perfectly rational behavior for a private company, it is an abdication of its duty for a Federal agency to adopt one company's agenda, no questions asked, when the public safety of Rural America is at stake. Knowing the benefits of public safety communications for Rural America, I would have preferred that we mandate rural areas get built out at the same pace as urban areas.

I am also concerned about the default penalty requirement that is triggered if the D block licensee chooses not to comply with an adjudication decision by the Commission or otherwise refuses to execute a Commission approved Network Sharing Agreement. That could prove yet another real disincentive to bidders. I would have preferred that we looked equally at the suggestion of some in the record that the Commission either eliminate the default payment entirely or consider basing the default payment liability on a standard of "bad faith." We also could have provided sufficient assurances through alternative means so that such a penalty might be reduced or removed.

I do want to thank the Chairman and my colleagues for agreeing to solicit additional comment on several issues I raised. These include the use of bidding credits for stimulating participation in the auction, ways in which we might rely on satellite capability to provide licensees with additional flexibility for meeting coverage requirements, and consideration of how we might incorporate non-traditional technologies into our rules.

While I appreciate that my colleagues have agreed to increase the comment and reply pleading cycle period by 16 and 3 days respectively, I would have preferred that we give commenters 45 days and 15 days for replies. If we were confident we had hit the mark with this proposal, a shorter comment period could have been warranted in the interest of speeding this along. I remain troubled that this comment period is inadequate, particularly in light of our less than cogent proposals. We should have taken pains not to give the appearance that we are going through the motions, rather than doing everything we can to get it right.

I must extend my thanks to the staff of our Wireless and Public Safety Bureaus as well as to our Office of Engineering and Technology who worked tirelessly to bring forward these proposals with the resources available to them.

Ultimately, I can only concur in part and dissent in part in this decision. In short, I do not believe we have adequately developed a foundation upon which to assess the viability of these proposals in the real world, especially under the current stress in the

financial markets. It is hard to have confidence that this plan will succeed, since we did not do the analysis to see if the cost-benefits are met for any private sector partner. These barriers to a successful auction, in conjunction with a less than meaningful comment cycle, cause me considerable pause.

Because we took this interim step of issuing a *Further Notice*, it is not too late. We can still get the expert input and conduct the analysis we need. I appreciate the many helpful suggestions made in this process by public safety agencies. We need more of your input, now more than ever, to help us achieve a consensus that will work for you in the field.

Although, I cannot support today's item in full, I remain hopeful that, after a lot of hard work and further refinement, I will be able to support the final *Order* that emerges from it.