

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket No. 12-69; Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band, RM-11592*

Last month, Congress received much deserved praise for passing legislation that gives the Commission authority to conduct voluntary incentive auctions. If finding new ways to repurpose spectrum for commercial mobile broadband services is a national priority, then removing a barrier to productive use of perhaps the most valuable spectrum the Commission has ever repurposed, should be just as important. I am grateful to Chairman Genachowski for releasing this NPRM this quarter. Amy Levine, Rick Kaplan, and Tom Peters deserve special mention for leading the staff to prepare an NPRM that shows us a path towards resolving this interoperability issue. But, the industry and the Commission owe American consumers much more. They deserve resolution of the issues and an interoperable lower 700 MHz band as quickly as possible.

We have owed the American public the competition and innovation in mobile broadband services that the 700 MHz band promises, since at least 2006, when the Commission initiated the proceeding to adopt service rules for the band. That proceeding was widely and closely followed not just by communications licensees and the lawyers that frequently lobby the Commission.

It also drew rapt attention from application developers, other technology innovators, and members of the public who do not often follow our proceedings. More than 250,000 different entities filed comments. Why? Because of the excellent propagation characteristics of the 700 MHz band.

The technological potential of this spectrum band is so great that the Commission tried to anticipate the impact that the acquisition of licenses for the band could have on competition throughout the mobile wireless ecosystem. The Commission found that wireless service providers had been requiring mobile device manufacturers to block consumer access to certain services such as Wi-Fi technology. Wi-Fi can improve the consumer experience by reducing network congestion and providing faster data throughput rates. Therefore, the Commission determined that the practice of blocking access to Wi-Fi was unrelated to reasonable network management, or technological necessity, and was an improper barrier to consumer choice. Accordingly, the Commission imposed an open access condition on the Upper C Block of the 700 MHz Band to encourage additional innovation and consumer choice at a critical stage in the evolution of wireless broadband services.

Unfortunately, the Commission did not foresee another way that the 700 MHz band could be used to harm consumer access to services. It did not anticipate there would be a standard setting process, which would divide the lower 700 MHz band, and would impede the ability of devices for A Block licenses to work on B Block and C Block networks. This lack of interoperability means fewer device and service choices for consumers. Fewer competitive options result in higher prices.

The Commission's failure to anticipate the lack of interoperability was perhaps excusable, in 2007, when it adopted the service rules for the 700 MHz band. That is because, as this NPRM explains, since the early 1980's, the Commission has sent strong messages that it expects wireless service licensees to offer consumers equipment that was capable of operating over the entire range of an allocated spectrum band. As the Commission stated, such interoperability, would "insure full coverage in all markets and compatibility on a nationwide basis."

In any event, the Commission's failure to anticipate this particular anticompetitive development means the Commission needs to move as quickly as possible to achieve true interoperability, in the lower

700 MHz band. I understand the interest in giving the industry some time to arrive at a voluntary solution. I agree that, generally speaking, such an approach can offer a market greater flexibility to respond to evolving consumer needs and fast-paced technological developments. But, the industry has already had more than four years to find a solution. This industry knows how to arrive at interoperability. In fact, as I alluded to before, until the splintering of the lower 700 MHz band occurred, the entire mobile wireless industry had been operating with the understanding that this Commission expects interoperability within all spectrum bands.

Therefore, the staff should not only carefully, but expeditiously, consider and resolve the claims about interference from Channel 51 licensees and from high power operations in the lower E Block. The staff should also be vigilant, in monitoring the industry effort, to find a voluntary solution. This NPRM provides sufficient notice about the rules the Commission might adopt if the industry does not achieve true interoperability across the lower 700 MHz band. At a minimum, those are the goals the voluntary solution should achieve. We need to quickly arrive at an appropriate method to measure the progress of those efforts. If sufficient progress is not being made, we should not hesitate to adopt these proposed rules. I look forward to an industry solution, or the adoption of rules, by the end of this calendar year.