STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
Approving in Part, Concurring in Part

RE: Policies Regarding Mobile Spectrum Holdings

Although we may sometimes disagree on substance, I commend Chairman Genachowski on his longstanding ability to maintain an open and constructive dialogue. As always, I take him at his word when he explains that his intent for this notice is to create more certainty for the wireless sector. That is a goal we both share, although we may prefer different paths to get there. In short, today we agree on process, but respectfully disagree on much of the substance.

Even though I have some reservations, I am taking a small step down this path to examine the Commission's approach to analyzing spectrum holdings. I agree that the Commission -- and all government agencies for that matter -- have an obligation to review regulations from time to time. Moreover, I respect the views of the service providers and civil society groups that have asked us to do this. I also recognize that many wireless carriers expressly asked the Commission to undertake a rulemaking on this issue.

Nonetheless, despite being able to find some common ground, I cannot agree with the view that the Commission's current flexible approach, which examines spectrum holdings on a case-by-case basis transparently and within the unique context of each auction or proposed transaction, is broken at its foundation. Further, I question whether these proposals are compatible with the Commission's oft-stated goal of making spectrum more abundant in the mobile marketplace.

Spectrum, which ultimately ends up in the hands of our nation's wireless broadband consumers, is *the* path to all of the new innovations that boost broadband adoption. Also, I wonder about the uncertainty we may be creating by merely releasing this notice, contrary to the intent of the notice's more enthusiastic proponents. We must always remember that when government just "keeps a watchful eye" on markets, our scrutiny has an effect on commerce. Indeed, going further with a one-size-fits-all cap, as suggested in this notice, will likely have unintended negative consequences later.

By way of brief background, in 2001, the Commission adopted the current process after determining that spectrum aggregation limits were no longer necessary due to meaningful competition among providers of telecommunications services. Since that time, the Commission has analyzed commercial wireless spectrum holdings on a case-by-case basis, oftentimes in close consultation with the Department of Justice. The current approach was created to result in narrowly-tailored, transaction-specific spectrum remedies that safeguard against anticompetitive behavior, encourage increased investment, and spur the creation of innovative consumer offerings.

Our unfettered wireless market is the envy of the world. The growth of the mobile industry over the past decade has been staggering. Just listen to some statistics from the Commission's most recent Wireless Competition Report: Since 2001, average minutes of use per

subscriber per month increased from 385 minutes[1] to about 700 today.[2] More important, given today's emphasis on broadband, is the growth in mobile data usage. In 2001, analysts estimated that there were between eight to ten million mobile Internet users.[3] By 2009, 55.8 million users accessed the Internet through mobile devices and with more powerful technologies.[4] Additionally, even with such great innovation in the mobile industry, consumers are paying less for their service.[5] Finally, the number of subscribers has increased from 128.4 million to 285.6 million through 2009 since the Commission sunset the spectrum cap in 2001.[6]

Despite this positive and constructive progress, a proposal to cap spectrum holdings is discussed at length not only in this notice, but also in the companion notice on incentive auctions that we adopt today. I am concerned that reviving this concept could create unnecessary and harmful market uncertainty. Until now, spectrum caps were a dead and buried 20th Century industrial policy relic. I am further concerned that significant language in the Commission's most recent Wireless Competition and Section 706 reports, coupled with recent important comments doubting the benefits of usage-based pricing, or what I call "pricing freedom," are creating a mosaic of evidence that increasingly points to greater regulation of the wireless industry. For these reasons, I encourage interested parties to comment on the potential for negative market effects should the Commission inch down the road toward spectrum caps or other new mandates.

Our light touch regulatory policy for mobile technologies, which includes the case-by-case analytical structure for spectrum, has enabled our wireless sector to flourish and continue to lead the world. I am hopeful that the Commission will not put all of this positive and constructive progress at risk as we explore the myriad options outlined in this notice. As none of us can predict the next disruptive technology, or where its spectrum home will be, I caution against inadvertently preventing further innovation and stifling future uses of spectrum based on what's-cool-at-the-moment. For instance, these trends include: labeling certain spectrum as "prime" (*i.e.*, that located below 1 GHz); classifying other bands as "junk;" or prejudging the "value" of spectrum bands that have yet to be auctioned. History shows us that today's "junk" is often tomorrow's "prime."

I take heart in knowing that we are at the beginning of what will surely be a lengthy and complicated process. Hard decisions have yet to be made. With that in mind, I humbly urge my colleagues to keep in mind just how robust our unfettered wireless market is when contemplating its regulatory future. I am hopeful that, rather than imposing artificial limits, we will instead work together to bring additional spectrum to market through auctions for exclusive use licenses to further promote competition and to foster continued innovation and progress in the wireless arena.

For these reasons, I vote to approve in part (on the process) and concur in part (on the substance). As always, I acknowledge and thank Ruth Milkman and her team in the Wireless Telecommunications Bureau for your work on this notice.

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[1] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Seventh Report*, 17 FCC Rcd 12985, 13006 (2002) (*Seventh Report*).
[2] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fifteenth Report*, 26 FCC Rcd 9664, 9783 ¶ 191 (2011) (*Fifteenth Report*).
[3] *Seventh Report*, 17 FCC Rcd at 12989 (noting the usage of users on a legacy cellular system).
[4] *Fifteenth Report*, 26 FCC Rcd at 9871 ¶ 366.
[5] *Id.* at 9782.
[6] *Id.* at 9760.