

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

*Re: Joint Application for Review of Constellation Communications Holdings, Inc., Mobile Communications, Inc. and ICO Global Communications (Holdings) Limited, Memorandum Opinion and Order.*

Today's decision was an exceptionally difficult one. It was difficult because it pitted two important Commission responsibilities against one another. On one hand the Commission has a statutory responsibility to protect the people's spectrum. That means protecting against the warehousing of spectrum and working to maximize output for each band. Because the Commission does not auction satellite spectrum, it devised a series of milestones that allow it to measure commitment to achieve a fully operational satellite system according to a specified schedule. Each milestone provides a way to assess whether a licensee is on the path to delivering service to consumers or is underutilizing the spectrum resource that has been entrusted to it.

On the other hand the Commission has an ongoing responsibility to be clear about licensees' responsibilities and to give adequate notice of its policies. Regulatory transparency and predictability are critical. They encourage more investment because companies making large investments can do so with the knowledge that they understand the rules of the game and that those rules will not be changed without adequate notice. Transparency and predictability are also core legal requirements for regulatory agencies under the Administrative Procedures Act.

In a perfect world we would be able to meet both of these responsibilities to everyone's satisfaction. But in this case I fear that we cannot. In the relatively new world of satellite milestones, and in the very new world of "strict enforcement" of those milestones, our licensees' precise responsibilities are not adequately clear in all circumstances. In this case a milestone designed to further our goal of fighting warehousing and maximizing output was not clear enough. Despite that lack of clarity, today the Commission rescinds authorizations held by Constellation and MCHI – the equivalent of the death penalty for a satellite company.

I am not comfortable with this extreme remedy, given the confusion over the exact requirements of our milestone. In the related Globalstar milestone order the company's non-contingent contract would not have allowed it to launch a satellite system that met its deadlines. For this reason the Commission correctly found that the company did not demonstrate a commitment to complete the construction of the system within the time frame specified in the license.

Here, by contrast, Constellation and MCHI's contract did provide evidence of a commitment to complete their satellite system. The wrinkle was that the companies intended to do so using ICO satellites. While I would prefer licensees to build their own systems so that more satellite infrastructure becomes available, I am not convinced that our rules clearly prohibited this arrangement. For this reason, I am pleased that the Commission is using this opportunity to explain our standard more clearly so that licensees have better notice of what types of non-traditional contractual arrangements satisfy the milestone, but I believe that given the circumstances of this case, granting a waiver as we did in the related TMI case, would have been more appropriate than the extreme act of rescinding authorizations.