

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART**

Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; WT Docket No. 02-381

I believe that wireless solutions are essential for rural America. Since I have been at the FCC, I have heard from wireless ISPs and mobile wireless companies who are doing their best to provide the latest technologies to all Americans, no matter where they live. So I take very seriously their suggestions about how the FCC can push rural wireless deployment. I also am mindful of our obligations to ensure that consumers of wireless services in rural markets are not left behind. Spectrum is the lifeblood of so many of the new wireless services and innovations that can light up the hardest areas to serve.

With that in mind, I believe that our item today makes some good decisions, but also makes a number of bad ones. While I appreciate the attention to this issue, it is certainly not what I would have drafted to promote rural wireless deployment. Its over-reliance on market mechanisms flies in the face of the very market failures too often experienced in rural areas that our policies should be designed to address. It is far from clear that we really are taking the right steps to truly facilitate deployment of wireless services in rural areas.

In some ways, we get it right. I am pleased that for a number of wireless services, we have increased power levels for base stations located in rural areas. I know that this is an important issue for many operators in rural America, and I am very excited about the potential for this change in our rules to improve the reach of mobile wireless services.

I also support our decision to adopt a new “rural safe harbor” for our substantial service requirement. While the substantial service construction requirement may not be a perfect approach to ensuring that spectrum is put to use, I think the rural safe harbor will enable licensees to pursue rural build out strategies with the comfort of knowing what they need to do to satisfy our construction rules.

I am a supporter of secondary markets. But I would have preferred that we more aggressively embraced the complimentary role of market-based mechanisms and re-licensing approaches such as “keep what you use” in this item. I think we passed up here a real opportunity to tackle a number of significant barriers to spectrum access. I do, however, appreciate the item’s conclusion that re-licensing and market-based mechanisms aren’t necessarily mutually exclusive and that the two approaches can be complimentary in certain circumstances. I also appreciate the cooperation of my colleagues in adopting a Further Notice that continues to explore possible re-licensing approaches and construction obligations for current and future licensees who hold licenses beyond their first term. I think this will be an important dialogue, and I will continue to push for an approach that provides for re-licensing in the event that market-based mechanisms still result in unused spectrum. We cannot afford to let spectrum lay fallow in rural areas. It is not fair to Rural Americans for companies to buy large swaths of spectrum that cover their homes only to ignore them and build out exclusively in urban areas. If they do not plan to use the

spectrum they acquired in rural areas, they should let someone else use it to serve rural consumers.

I recognize that there was support by a number of smaller carriers for a Commission determination to adopt RSA/MSAs for all future licensing. However, I believe that the Commission must retain flexibility in addressing license area sizes on a band by band basis. I want to make a personal commitment, though, to doing what I can to make sure we have a balanced approach in licensing that provides for small and large license areas, just as I did in our recent Advanced Wireless Services proceeding.

I must dissent from two portions of today's item. First, I am perplexed how the majority's decision to eliminate the cellular cross-ownership rule promotes service in rural areas. I was willing to adopt our tentative conclusion from the NPRM to maintain the restriction, but only for RSAs that are served by three or fewer CMRS providers. While I recognize that such an approach may have posed some implementation difficulties, I do not believe those challenges were so insurmountable that they warrant complete elimination of the rule. Moreover, the majority has failed to provide any real compelling reason for eliminating the rule, instead basing the decision on a determination that the rule should be eliminated because we now have adequate resources and procedures in place to allow for case-by case review and somehow the need for flexibility outweighs any concerns about consolidation over cellular spectrum in markets where competitors would go from three to two or two to one. The item completely fails to address some of the concerns raised by previous Commissions that justified the rule in the first place, such as market conditions in rural areas and the fact that cellular carriers may still possess market power in those RSAs. I cannot see how it would ever make sense in rural areas with two wireless providers to let them merge, leaving consumers with only one monopoly choice. But this approach could let that happen.

Second, I also must dissent from the majority's decision to allow licensees to grant security interests in licenses to the Rural Utilities Service (RUS). This is a difficult decision for me, as I have been a strong supporter of RUS and its funding of broadband and wireless services in rural areas. I ultimately concluded, however, that our decision to allow a security interest to RUS, even as part of the Federal Government, raises significant statutory problems that are not outweighed by the real benefits that may arise. While it was the right decision to limit the ability to gain a security interest to a fellow government agency, since spectrum is a public resource, I am nevertheless concerned about the precedent of this decision. I do appreciate the efforts to limit the scope of the decision as greatly as possible.

Deployment of wireless services in Rural America raises a number of challenges. While we haven't entirely succeeded in addressing many of those challenges today, I look forward to the further notice and a full discussion there on what steps we can take to improving access to spectrum in these areas in the future.