

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

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket No. 06-150); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01-309); Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WT Docket No. 03-264); Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules (WT Docket No. 06-169); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06-229); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WT Docket No. 96-86); Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule (WT Docket No. 07-166); Second Report and Order

Our decision today is one of the most significant and groundbreaking we have conducted in the time I have served. These 700 MHz licenses are the finest crown jewels the FCC has to put up for auction. This coveted spectrum presents us with a historic opportunity to facilitate vibrant, spectrum-based opportunities for both consumers and wireless providers. I am pleased that today's item, to some extent, embraces this potential for the next generation of wireless broadband service providers. I commend Chairman Kevin Martin for his leadership in steering this item on a consensus path that serves consumers.

Most of the time, our decisions are relatively narrow – limited to a specific issue or segment of industry. Other times, we are presented with an opportunity to shape a larger segment of the market. On this rare occasion, we are presented with the dual opportunity to fundamentally begin to change the way over 200 million U.S. consumers receive their wireless services, while at the same time substantially redefining the FCC's approach to spectrum policy for years to come.

It would have been easier to stick with what's tried and true in considering the 700 MHz band. We could have declined to adopt any controversial conditions to open the market; we could have stuck with our traditional substantial service construction standard; we could have allowed public safety agencies to fend for themselves in trying to develop a long-awaited interoperable network. We could hold a fine auction without much effort. But because our job is to promote the public interest, the status quo was not an option.

I have heard the plea of 250,000 consumers who submitted comments in support of open access. I have heard the concerns of Silicon Valley's best minds expressing frustration with their inability to innovate in the wireless space. I have heard the public safety community's cry for help, and their willingness to join their spectrum with a commercial provider in order to create a unique public-private partnership. And we've responded.

Open Access. While this item does not deliver everything consumers and innovators wanted, or many of the improvements I suggested, our decision today represents an important step, if a modest one, in the right direction. We can be proud to say we are offering consumers a new paradigm they have longed for and certainly deserve. We cannot afford to let innovation in wireless devices and applications take root in Europe and Asia before it can occur in the U.S. If we want to maintain our world leadership in technology, we need to harness the full creativity of our many wireless engineers and entrepreneurs. We need to unleash them from the shackles of a handful of gatekeepers who dominate access to the wireless mass market.

The item before us is a positive step for consumers because it sets in motion a new approach. I am pleased with the willingness of my colleagues to support a meaningful, though not perfect, open access environment on a significant portion of the 700 MHz spectrum. It represents an honest, good faith effort to establish an open access regime for devices and applications.

I especially appreciate my colleagues' willingness to work with me to include real enforcement with teeth, and provisions to promote a genuinely open standard that innovators can build upon. The Order before us is significantly improved in these areas, although the true test of their effectiveness will be seen over time and through future Commission actions and oversight. So, we'll need a true commitment if this Order is going to be effective. If successful, our approach can ultimately lead to benefits for the many consumers who so desperately want unfettered ability to use any wireless handset and download any application they want on the C Block spectrum.

The past several years have seen an explosion of new opportunities for consumers, like Wi-Fi, WiMax, and more advanced mobile services. But despite these technological advances, consumers are frustrated by arbitrary limitations on the types of devices and functions they can access. The open access requirements we adopt today can and should improve the consumer experience. Now, instead of being limited to purchasing a phone and service contract from one network provider, a consumer can purchase any wireless device compatible with the C Block network and use all of the available features and functions.

This also means progress for wireless innovators – application developers, manufacturers, and carriers alike who will now be unleashed to bring new multi-media products to market for use on this spectrum. The Internet has been a source of remarkable innovation and an engine for economic growth and productivity. It is critical that we bring the benefits of the Internet to the wireless world, and I believe our actions today take us in that direction.

Wholesale. One of the best options for promoting broadband, particularly in rural areas, and for providing new competition all across the country, is maximizing the potential of spectrum-based services. Instead of the third “pipe,” this holds promise as the third “channel.” Or – if we can wax truly optimistic – perhaps we have an opportunity for a fourth or fifth channel through the innovative use of spectrum. Ideally, this auction will facilitate the emergence of new broadband channels with the goal of providing consumers everywhere the benefits of a high-quality wireless broadband network.

Though we have hope and expectations for this auction, we must recognize that today's decision alone won't solve our broadband challenges, nor will it provide any instant remedies. Even if all goes well, today's decision won't afford opportunities until 2010 at the earliest. Yet, right now, we face major challenges bringing affordable, truly-high speed broadband to all our communities and ensuring that we give our citizens the same choices and tools that are available to citizens in the countries that are our leading global competitors. So, we can certainly ill afford to claim “victory” and sit idly on our hands for the next two plus years.

While I remain hopeful that such a third channel does emerge, I am concerned that we haven't done enough here to open up these critical airwaves to badly needed competition in the broadband space. Those who argue such measures are not necessary because the wireless market is already competitive miss the point. The real problem is the lack of competition in the *broadband* market, where 96 percent of consumers are served by the incumbent telephone or cable company.

I believe that a truly open wholesale model would stand as a breeding ground for innovation, for allowing new and diverse competitors to flourish, and for spurring unparalleled levels of competition into

the broadband marketplace. While this item represents progress for consumers in terms of new openness for devices and applications, I can only concur to this portion of the item because we could have done more to promote open markets by adopting a wholesale model to attract vigorous competitive alternatives.

We have also lost an opportunity to provide crucial bidding credits to designated entities that wholesale fully built-out network services. I think it is essential that we revisit our policies in this respect to ensure that all bidders have opportunities to bid, particularly where wholesale service is a compelling option for new and diverse providers.

We have had to strike a compromise – and while the measures we take here today are less than what I would have proposed, they are significant and will serve consumers well. At the end of the day, though, I am afraid we may have missed a golden opportunity to open that elusive third channel into the home.

Band Plan and Service Rules. I've often talked of "spectrum facilitation" – looking at all approaches, technical, economic or regulatory, to get spectrum into the hands of operators ready to serve consumers at the most local levels possible. We have a special responsibility to establish band plans that allow for a diversity of license sizes and to maximize the level of utilization by giving more options so that the market can perform most efficiently. I recognize that many small providers believe that we have failed to provide for them today. I am somewhat frustrated that the pro-consumer open access provisions were tied to a large 22 MHz block, and would have been happy to break that into pieces that could have better accommodated the needs of a variety of sizes of players. I am also concerned that the reserve price and second auction requirements set out in this item leave open a real potential for gaming and may result in unintended consequences.

But I am pleased that we have added a paired Economic Area block in the lower band to the Cellular Market Area license already set for auction. And, as discussed below, we have adopted aggressive build-out requirements to promote network buildout. These are significant changes that will help provide additional opportunities for small and mid-sized interests, rural providers, and new entrants.

Our job at the FCC is to do whatever we can to promote spectrum-based opportunities in the future. To get there, I am continually evaluating the FCC's service and construction rules to ensure that our policies do not undercut the ability of wireless innovators to get access to new or unused spectrum. I have advocated a carrot and stick approach. We want to promote flexibility and innovation, but since the spectrum is a finite public resource, we want to see results as well.

In our item today, we adopt some of the strongest performance requirements in history to ensure that this wireless frontier truly gets developed. As we did with the homesteaders 150 years ago, we are happy to get this prime real estate in the hands of those that will use it. Just like the government required of homesteaders, we want this fertile soil tilled and put into use, including in rural areas of the country. Out of this development will sprout the fruits of innovative product and service offerings to every corner of America.

Regrettably, though, I have long advocated the adoption of a triggered "keep what you use" approach to spectrum policy, and I am disappointed that such an approach is not adopted in this item. I am hopeful we can make progress on this because I think it presents the best vehicle to ensure that fallow spectrum is either put to use or made available to other interested parties.

Public-Private Partnership for Public Safety. Finally, I'd like to turn to perhaps the most paramount issue for this Commission: public safety. The role of communications is so important during

emergencies, whether citizens are trying to find out what is happening with their families or emergency personnel are responding to an urgent situation. It is critical that the Commission provide the best leadership possible to ensure that communications are fully operational during these most serious events. Indeed, this is one of our core directives under the Communications Act of 1934, codified in the Act's very first section.

The Commission can and must play a key role in improving our nation's disaster preparedness, network reliability, and communications among first responders. This item marks a pivotal step in addressing the needs of public safety. Six years after the tragedies of 9/11 and three years after the 9/11 Commission issued its report on terror attacks on the United States, our country is still without a national interoperable public safety broadband network. Policymakers all agree that our first responders need the best technology and communications network possible. Yet to date, there have been no other viable plans brought forward to realize the critical need for an interoperable network for public safety.

The implementation of this shared commercial and public safety network presents a myriad of complex and novel issues. There is no guarantee that the model we've created here will nurture a nationwide interoperable public safety system that is both commercially viable and technically feasible. And while I would prefer direct Federal funding for building a national public safety broadband network, it presents the only option available to us at the Commission. For this reason, I am happy that this Commission is stepping forward to meet this challenge by paving the way for a public/private partnership. This may be the only way to realize the important goal of making a nationwide and interoperable network truly available to our nation's first responders.

Conclusion. There's an old expression that to make an omelet, you have to break some eggs. Today, we are cooking up a new age of wireless services. I appreciate the steps we are taking, and am pleased that we are moving forward in ways that this Commission would have never even considered a year or two ago. I look forward to a successful auction and the successful implementation of our exciting new policies.