

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE  
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

To begin, I also would like to thank the staff of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau for their incredibly hard work on this item.

With the upcoming auction of spectrum in the 700 MHz Band, we have the historic opportunity to generate billions of dollars for the U.S. Treasury and its taxpayers, spur the development of broadband to rural Americans, and support the creation of a nationwide interoperable broadband communications network for the benefit of state and local public safety users—and ultimately for the safety and security of all Americans. A majority of this Commission has agreed to the rules established by this item and I cannot say they are totally wrong. I may not agree with their reasoning or philosophy, but this is a very close call. Given the importance of this auction, our statutory time constraints and my desire to always try to reach a consensus, overall I support the item, noting my strong support for the portions of the order related to public safety service, while being lukewarm regarding the portion of the item that places what my colleagues call “open access” in the C Block on devices. I can only concur as to the majority's extension of open access to applications. There is much that is good about this item, but it is by no means a perfect one.

I would have preferred, as some commenters noted, to have a full and open hearing, time for thoughtful discussion within the context of another, more appropriate legal venue. However, this was my only chance to have what I consider a more positive impact on a less than perfect experiment.

First and foremost is our joint desire and one we have all spent a great deal of time discussing: a nationwide broadband infrastructure for public safety. The promise of this type of network will help finally fulfill important and indeed life-saving goals of the 911 Commission, our own post-Katrina panel as well as what we have seen and heard around the nation: the ability for a firefighter and a police chief to communicate during a local emergency.

Regarding our public safety community, the dissemination of vital information and interoperable communications are the backbone of our defense against attacks on our homeland, as well as our ability to respond to natural disasters or even an environmental crisis or pandemic. Today's item strengthens this defense. In addition, we re-band the public safety spectrum in a way that will allow more broadband service to the public safety community by working in cooperation with the commercial licensee involved in a public/private partnership. With input from the public safety community regarding their needs and desires and a number of fascinating, entrepreneurial concepts proposed in the comments, the public/private partnership made possible by this order also will help create important incentives for a commercial entity to serve private consumers as well as the public safety community as they protect the

safety of life, health, and property of all Americans. We also adopt strict build-out rules for the commercial licensee in this partnership, with an aggressive schedule for serving public safety users.

In addition, I am pleased that the item helps promote broadband service in rural America. Broadband deployment means, or should mean, the availability of advanced services to all Americans. As a former state official in a state with a large rural population, expanding the availability of broadband beyond the largest cities is important to me. Just last week, I joined Tennessee officials for the announcement of “Connect Tennessee”. This public-private partnership, already wildly successful in Kentucky, will be a blueprint for expanding and encouraging all types of broadband connectivity. This item takes an important step towards this goal by adopting smaller geographic license areas for almost half of the spectrum to be auctioned in the 700 MHz Band. Such a policy makes it easier for small and rural service providers – firms that often best know the rural consumer – to acquire the spectrum they need to serve in these rural markets. We also establish strict build-out requirements to ensure that the majority of consumers, including those in rural areas, are served.

For the most part, the rules that we apply to the 700 MHz Band also will allow licensees the flexibility they need to experiment and develop those services that are demanded by consumers. Similarly, the mix of geographic license areas – including smaller license areas over CMAs and EAs as well as larger license areas – will allow potential service providers of all sizes to more easily acquire spectrum licenses that meet their business needs.

We take other steps in this order in a similar effort to allow consumers more control over the devices and applications they use in one specific block, the Upper 700 MHz C Block. I am hesitant to use the term “open access,” since it means different things to different people. Here, I interpret our decision to pertain to “unlocking and unblocking” legal devices and applications as used by the consumer, while also recognizing and specifically allowing for protection of the network, and nothing more. I hope this decision will unleash untold new devices and applications that users will be able to enjoy at home, at work, on the go, in hotspots, and in rural areas.

Many consumers want mobile devices that are not tied to any one network. For this reason, I support device portability as yet another means of consumer choice. I also recognize that at least some network operators increasingly are giving their customers this option, or stating they may give this option, in the future. Thus, to some extent, the item we adopt today simply codifies what the market already is doing.

Many consumers also want to access a variety of applications, including some currently not available under arrangements with many network operators. This issue poses great potential for incredible consumer benefit. It also poses risks.

Moreover, we should keep in mind that our wireless infrastructure, including commercial wireless infrastructure, plays an important role in supporting public safety and homeland security. The conditions we adopt today are designed to apply so long as the operator’s network is properly protected. We should not underestimate the value of reasonable requirements established by a network operator to protect its network and allow for compliance with its regulatory obligations, such as an obligation to provide e911 service.

None of us would want an e911 call to go unanswered because it could not find its way through a maze of movie and music downloads, or malicious software. Thus, the network operator must be able to reasonably manage the foreign applications on its network.

I also recognize that, in adopting these limited conditions, we also may influence the next generation of industry structure. Mandating a certain type of industry structure in one band may have a positive impact,

and certainly that is what we hope. Again, we must carefully consider the risks.

We should not forget that the U.S. wireless market that has so effectively served American consumers is one of the most competitive in the world, with prices lower, and usage higher, than any country in Europe and almost any country in the world. It also is a market with great innovation, including, most recently, the Apple I-phone and a Sprint Nextel partnership with Google to bring applications via WiMax service.

I hope today's item will not result in unexpected negative consequences, such as consumers seeing less of such innovations or losing access to the many packages of services they enjoy today. If this effort is successful, consumers will enjoy the fruits of one additional type of business model in the years to come. In the end, it is the consumer and the marketplace who will be the judge.

It is with these concerns that I support the narrowly tailored requirements in this order. However, let me be clear regarding what it does not include. As adopted here, these rules do not apply to any currently issued spectrum license. They do not directly affect any existing network. They do not affect any existing pricing structure. Carriers will still be free to establish business plans of their choice, including, for instance, pricing models based on the amount of bandwidth used, tiered pricing, or other innovations we have not yet seen. Carriers also will retain the ability to establish reasonable safeguards in order to protect their network. Moreover, even if a device meets network certifications, wireless providers of course may stop malicious or illegal applications. Similarly, carriers will not be liable for harms that arise out of the use of foreign devices, including harms related to applications used on such devices, much like our treatment of cable and wireline providers when customers use foreign devices on their networks. Given our recognition of the importance that wireless infrastructure plays – and will continue to play for years to come – in homeland security, the carriers are held harmless for devices and applications that cause network failures that may affect e911, CALEA, or other social obligations required by law.

We also provide even more safeguards regarding the auction proceeds and the potential winning bids pursuant to the Deficit Reduction Act of 2005, by setting a reasonable reserve price for spectrum blocks in this auction. Thus, if we are wrong about the “open access” conditions and the reserve price is not met, then this spectrum block, as the Chairman recently testified, will immediately be re-auctioned without any of these conditions.

My hope is that we have created an incubator for the next killer app, the next platform or the next cool device. In fact, the entrepreneur-inventor who will make all this happen is probably just in the 8<sup>th</sup> grade. We have provided one finite place to encourage the next fantastic innovation to occur and for Americans to roam free across networks, miles and corporate business models.