

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; WT Docket No. 06-150 et al;
Report and Order and Further Notice of Proposed Rulemaking*

Today, we take another step towards one of the most significant FCC actions in this decade. Our 700 MHz auction will be a critical opportunity for new and existing providers to bring the latest technologies and services to the American people. There rightly is a great deal of pressure on the Commission to construct a band plan and service rules that will meet a wide-range of interests. We hear from an ever-increasing chorus of voices expressing concern about the lack of competition in the broadband marketplace and the need to promote advanced services in rural and other underserved areas. So our decisions today and in the near future will have a profound impact on the future role of wireless broadband services and on the ability of wireless providers to provide important competition to existing providers of these critical services.

The item before us is much improved, and because of these changes I can enthusiastically support it. I appreciate the willingness of my colleagues to accept several of my edits to create a more balanced discussion of a proposed band plan and to ask more meaningful questions about ways in which the band plan should or not be changed. I also support the meaningful performance requirements proposed in the item and am pleased with Chairman Martin's suggestion to propose to apply these requirements on a geographic basis. Finally, I support our inquiry into whether or not we should condition a "Block E" license on the licensee constructing a public safety broadband network and providing wholesale commercial services. I am pleased that we were able to add a number of important questions about the oversight of such a potential licensee.

The item is also greatly improved with the addition of a number of the questions raised by the *Ad Hoc* Public Interest Spectrum Coalition about alternative open access proposals in the 700 MHz band and on possible steps the Commission could take to encourage the entry of new wireless competitors. We need to maximize the possibility that new competition emerges from this spectrum opportunity. Some talk about a "third pipe" into the home to challenge the cozy duopoly between the cable and telephone companies that now dominate the broadband marketplace. I like to think we need to encourage the creation of a "third channel" into the home, since wireless technologies are most likely to provide the competitive alternative. The questions we ask today about open access networks are critical to informing this debate.

Band Plan

The Commission has a unique role in establishing the market for spectrum. Auctions are a free-market mechanism, but it is the government's role to establish the ground rules through a band plan. We have a special responsibility to establish band plans that allow for a diversity of license sizes. We want to maximize the level of utilization by giving more options so that the market can perform most efficiently. We also want to preclude companies from being forced to bid on licenses that are larger than the areas they intend to serve. Large carriers can always aggregate smaller licenses, but companies of all sizes cannot make license areas any smaller during the auction process than what the Commission allows.

As we begin to finalize our rules for the 700 MHz auction, it is critical we build on the lessons learned from our previous auctions to provide a diverse group of licenses so that all bidders have an opportunity to obtain licenses that best match their business plan. While I have supported rules to facilitate the secondary market for spectrum rights and licenses, I think we are best served by providing a wide variety of license sizes at the initial auction when appropriate.

Turning to the specific item before us, I would have been concerned if the Commission had proposed a band plan that ignored the overwhelming record that advocated for a more balanced set of license areas – a band plan that would accommodate large and small interests, tribal governments, rural providers, and possible new entrants. We simply would not have been well served by a band plan that positions all but one of the remaining blocks to be auctioned on a large, regional basis. So I am very pleased with our proposal to auction off the paired A block in the lower 700 MHz band on EA basis.

While I am troubled by the item's treatment of the Broadband Optimization Plan, I am pleased that we have added a request for comment on the latest proposal by Access Spectrum and Pegasus to reconfigure the guard band and public safety 700 MHz spectrum allocations. Access Spectrum and Pegasus are to be commended for their ongoing efforts in pushing proposals that will facilitate more efficient use of the upper 700 MHz band while at the same time addressing critical communications needs of public safety. Their recent proposal deserves serious consideration as it (1) clearly addresses the Canadian border issue for public safety; (2) eliminates the need for undefined temporary easements in the commercial band adjacent to public safety; and (3) ensures funding from Access Spectrum and Pegasus for the conversion of existing 700 MHz narrowband public safety systems and the necessary changes to the Computer Assisted Pre-Coordination Resource and Database System. These are important public interest objectives, and are particularly critical to the consolidation of public safety's narrowband spectrum.

Finally, I am pleased that we are seeking comment on a variety of proposals to modify the structure of the upper 700 MHz band. We have heard from a number of diverse parties on this matter, and I believe it is important that we continue to keep critical band plan issues on the table given that we are putting other proposals out for comment. This discussion will well inform and advance our consideration of these challenging issues.

Some have argued that a more flexible upper 700 MHz band plan that includes a mix of licenses could better support a variety of business plans and ensures that the spectrum is made available to the bidders that value it most. There is a concern that a band plan with only REAGs in the upper 700 MHz band may artificially favor only the largest wireless incumbents or particular business models. On the other hand, a paired 22 MHz block available on a REAG basis could address the needs of potential new entrants, some of whom argue that they need the ability to create a large swath of spectrum to compete with a wireless broadband product on a national basis. And other groups have noted that this 700 MHz spectrum is a unique opportunity to create a new competitor to our highly-concentrated broadband market, and have argued that a band plan that allows for larger blocks will facilitate entry by new providers.

So I am pleased that we have band plans in the item representing all of these different views. I did not believe it was necessary to potentially foreclose the band plan debate today by tipping our hand in one direction or the other, at the same time we are seeking further comment on so many issues related to the 700 MHz auction.

Performance requirements

I have long talked about my interests in promoting spectrum use. Our job at the FCC is to do whatever we can to promote spectrum-based opportunities like the significant prospects for advanced wireless communications services in the 700 MHz band. 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 this regard, I am pleased to support the Chairman's proposal to base performance requirements in the 700 MHz band on a geographic basis. This is a meaningful requirement that shows the Commission's resolve in ensuring that this valuable public resource is put to use for the benefit of all Americans, no matter where they live. By proposing a geographic coverage requirement, we are looking to ensure that 700 MHz will not become an untapped well for the thirsty and instead will be deployed to all corners of the country. Given the favorable propagation characteristics of this spectrum, a rigorous performance requirement well serves the public interest.

E Block Public-Private Public Safety Network

This country has a dilemma. Policymakers all agree that our first responders need the best technology and communications networks possible. Yet, we continue to have a situation in which many of our nation's public safety agencies struggle to keep pace with today's rapidly evolving communications landscape. And interoperability remains an elusive goal for too many first responders. Our nation needs a national interoperable public safety broadband network.

So I very much appreciate the leadership of Frontline in developing a creative proposal that may allow this country to move forward with a national public safety communications network. And I would be remiss in not recognizing the early work of Cyren Call in planting the seeds of a commercially-supported public safety broadband network.

The Frontline proposal offers many intriguing positions. First and foremost, the Commission would require the E Block licensee to construct and operate a nationwide, interoperable broadband network for sharing with a national public safety licensee. This public-private network would use commercial spectrum in the upper 700 MHz band as well as 12 megahertz of the public safety spectrum block. Second, the E Block licensee would be required to operate as a facilities-based wholesale provider with respect to commercial use of the spectrum. And finally, the E Block licensee would be required to provide open access to its network, allow the attachment of any device to its network, and permit users to access the content and services of their choice. Frontline's proposal rightly addresses many of the concerns that have been recently raised with our existing wireless communications marketplace.

So I applaud Frontline for their initiative; but a number of questions still remain if we decide to go forward with such a unique proposal. Primarily, how does the Commission ensure that the E Block licensee truly meets the needs of public safety in deploying and operating the national broadband network? What can the Commission legally impose on the E Block licensee to make sure that it meets not just its own commercial objectives, but the Government's objectives as well? If we go forward with a facilities-based wholesale network, what rules can we adopt to ensure that the E Block licensee does not simply turn around and wholesale services back to itself or its commonly controlled affiliates? I am pleased that we were able to add a number of additional questions to the item about the oversight of the E Block licensee should the Frontline proposal be adopted in one form and another.

Conclusion

Finally, as we consider a schedule for the upcoming 700 MHz auction, we must remember that our rules have not yet been finalized. We must be mindful that some companies may not currently be in a position to move forward with plans to participate in the auction until the Commission makes a final decision about the band plan and specific performance requirements. They need sufficient time to establish business plans and line up financing. Consequently, we must make sure that our auction schedule allows for sufficient spacing between the adoption of final 700 MHz band rules and the filing of auction applications. This will ensure that the auction truly is available to a diverse group of interested parties, and that full participation will lead to a more successful and robust auction. I am confident that we can provide the necessary time for preparation and still comply with our statutory obligations related

to the auction.

I would like to thank the Wireless Telecommunications Bureau staff for their continued hard work in guiding us to the 700 MHz auction. With the digital transition on the horizon, our work comes at a crucial time, and we are making decisions that will impact the 700 MHz band and indeed the future of wireless services to come. Additional dialogue on these matters can only serve American consumers well. I look forward to working with my colleagues and the Bureau in tackling these important issues in the very near future.