

**CONCURRING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *In the Matter of Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, WT Docket No. 11-18.*

I concur with today's decision to grant the applications to transfer Qualcomm's licenses and authorizations in the D and E Blocks of the lower 700 MHz band to AT&T.

A number of parties, including consumer advocates and holders of licenses in the A Block of the lower 700 MHz band, have made persuasive arguments in opposition to this transaction. They contend, if the Commission decides to approve the applications, that we should adopt an interoperability condition that would require any AT&T device operating on paired spectrum in the lower 700 MHz band, to operate on all paired spectrum in that part of the band. This would mean that AT&T would have to migrate from Band Class 17 devices, which only permit access to B Block and C Block licenses in the lower 700 MHz band, to Band Class 12 devices, which permit access to A, B, and C Block licenses in this band. The A Block licensees assert that the decision to split the lower 700 MHz in to Band Class 12 and Band Class 17, occurred after they acquired their A Block spectrum in Auction No. 73 in 2008. The A Block licensees also maintain that, as a result of this decision, the lower 700 MHz band now enjoys the distinction of being the only historical mobile wireless band in the United States without a unified band plan. They argue that unified band plans are necessary to promote network deployment, industry growth, and consumer choice because, without a common band plan, voice and data roaming is not possible. They also argue that the lack of interoperability in the lower 700 MHz band impedes voice and data roaming, and some of these parties were willing to accept a condition that would require device interoperability to be implemented by the beginning of 2013.

For me, the lack of interoperability in the 700 MHz band was the most challenging issue in this proceeding. I am very concerned that the 700 MHz band, which holds so much promise because of its excellent propagation characteristics, has become the only mobile wireless band without a unified band plan. We have to make progress on this issue to fully deliver on the promise of mobile broadband for all Americans. I agree with most of these arguments from the A Block licensees and the Order actually credits many of their issues. In fact, after finding that this transaction results in spectrum concentration that raises the potential for competitive harm, the Order finds it necessary to adopt a "more circumscribed condition to ensure that AT&T does not use the Qualcomm spectrum in a way that deprives other providers of the benefits of the Commission's roaming rules." The Order also states "that the lack of interoperability in the 700 MHz band raises important public interest concerns." In my opinion, this is an understatement. Without true interoperability, consumers will not likely see the true potential that the excellent propagation characteristics of the 700 MHz band could offer. Lack of interoperability means fewer competitive options for service providers offering 700 MHz devices and services. That, in turn, means higher prices and fewer product choices for consumers.

For these reasons, I would have preferred that the Order found that the lack of interoperability is a merger specific issue that should be remedied by an interoperability condition similar to the one that the A Block licensees and other parties requested. But today, the policy priority for me is the most efficient path possible for interoperability in the lower 700 MHz band. In order to accomplish this, compromise among all stakeholders will be necessary. I am heartened that Chairman Genachowski has agreed to expeditiously conduct an interoperability proceeding next year, and I thank him for this commitment. Although AT&T opposes addressing interoperability standards in this proceeding, it has voluntarily committed to not oppose its

migration to Band Class 12 if the FCC appropriately resolves interference issues with Channel 51 and the E Block. I understand the advocates for interoperability across the lower 700 MHz band would have preferred the Commission go further. However, since the commitments I discussed are positive developments towards interoperability, which likely would not have occurred without this proceeding, I concur with today's Order.