

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART; CONCURRING IN PART**

Re: *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, WT Docket No. 12-269, Docket No. 12-268.

There are many aspects of this Order I fully support. I am glad we are updating the Commission's policies on measuring how spectrum aggregation impacts competition in the wireless industry. Our last comprehensive review of these policies occurred more than a decade ago and, since then, significant developments have impacted the structure of the market for mobile wireless services.

Most significant are dramatic increases in the demand for wireless services, especially mobile broadband, and the reduction in the number of service options for consumers particularly in rural areas. Today, 92 percent of consumers have access to four providers offering 3G or 4G services. But in rural markets that figure stands at only 37 percent. So I believe that it is imperative that we develop policies that address this discrepancy and ensure that all Americans, regardless of where they live, enjoy the benefits that competition can provide.

It is also time for our spectrum management policies to account for the engineering differences between spectrum below and above-1 GHz. The Commission has been commenting on these differences in annual competition reports, since 2010, and I am glad we have taken a more careful look at both sides of the issue and have finally made a decision. The record is replete with evidence that, because spectrum below-1 GHz has superior signal propagation characteristics, it has distinct network deployment advantages for carriers who want to deploy in rural areas and indoor locations. Therefore, I commend the decision to treat certain levels of increased aggregations of below-1 GHz spectrum, as an enhanced factor, during case-by-case review of transactions involving such spectrum.

I also strongly support the rule that would reserve up to 30 megahertz of spectrum, for the 600 MHz auction. It would condition eligibility to bid on, among other factors, whether a carrier holds less than 45 MHz of below-1 GHz spectrum on a population weighted average in a particular local market. There is no question we have the statutory authority to allocate spectrum licenses in a manner that promotes competition, for the Communications Act instructs the FCC, to "avoid[] excessive concentration of licenses," and to "disseminate[] licenses among a wide variety of applicants, including small businesses." The plain language of the Middle Class Tax Relief and Job Creation Act reaffirms the Commission's authority to, and I quote: "adopt rules of general applicability, including rules, concerning spectrum aggregation, that promote competition." Such a spectrum allocation rule would also be consistent with our precedent. As the Order explains, since the 1980s, the Commission has often adopted policies designed to prevent undue concentration of spectrum licenses necessary to provide those services.

There are a number of factors that suggest we should apply such a rule to spectrum made available in the incentive auction. Below-1 GHz spectrum is particularly valuable for deploying wireless services in a more cost effective manner. Currently, there is substantial consolidation of below-1 GHz spectrum in the hands of just a few, nationwide carriers. The upcoming 600 MHz auction could allow these same carriers to increase this advantage over their competitors. And there is unlikely to be another auction, in the near future, that would permit their competitors to acquire below-1 GHz spectrum.

That is why I am also glad that, in setting the unreserved/ reserved amounts in the forward auction, we are doing so with a local market approach. In the annual mobile services reports, I always focus on the number of people who live in rural markets with two or fewer wireless providers. In last

year's report, that number stood at 7.7 million. I believe closely examining the relevant aspects of a local market's competitive structure helps to ensure that our policies are best able to promote more competition in rural markets.

I must say, however, that there are aspects of this Order I have problems with. These are the amounts of unreserved/reserved spectrum in the scenarios when we recover 60 MHz and 50 MHz of broadcast spectrum. In the draft Order the Chairman originally circulated, the split of unreserved to reserved spectrum in these scenarios would have been 30/30 and 30/20, respectively. Much to my dismay, those original proposals were changed to 40/20 and 40/10.

In short, I preferred the original proposals. A number of wireless carriers told my Office they want the opportunity to acquire 20 megahertz of spectrum in the incentive auction. By allocating 30 megahertz of spectrum for unreserved spectrum, we would have created an incentive for these companies to compete intensely to acquire that 20 megahertz of spectrum.

And encouraging competition between the strongest providers, in a market, has repeatedly proved effective for increasing auction revenues. Take our neighbors to the north who most recently took a similar approach in an auction. Canada reserved some licenses for bidders other than the dominant three carriers. It resulted in a very successful 700 MHz auction and those rules forced the largest carriers to bid against each other for the blocks of unreserved licenses. The ensuing bidding war generated the most revenue ever raised by a wireless auction in Canada.

By shifting to 40 megahertz of unreserved spectrum in the 60 and 50 megahertz recovery scenarios, we are encouraging the top two carriers in every local market to each acquire their coveted 20 megahertz of spectrum without having to aggressively compete against each other. This approach, I believe, fails to promote the most efficient allocation of spectrum. It will not, I fear, provide incentive for wireless carriers to bid higher, which in turn, would encourage more broadcasters to relinquish their spectrum in the reverse auction. It is also taking, from the reserved category, valuable spectrum that smaller carriers would have had a better opportunity to acquire in order to remain competitive and provide existing customers with better service and options.

My doubts and my fears force me to partially concur on this section of the item. But I believe it is important that we have spectrum aggregation rules that can be applied in the 600 MHz auction. Therefore, a compromise here was necessary in order to achieve a majority vote on the aspects of the Order that make reserved spectrum available.

I thank Roger Sherman, Jim Schlichting, Joel Taubenblatt, Michael Janson, and Bill Richardson for their detailed briefings and commend Nese Guendelsberger, Kate Mataves, and the other staff members, who worked hard to produce an item with very creative proposals. And I want to once again acknowledge the excellent work, of my wireless legal advisor, Louis Peraertz.