SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

September 10, 2003

RE: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services; 2000 Biennial Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; and Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation.

I would like to thank the Chairman for continuing to move forward with this important proceeding. Over the past several years I have noted in statements, along with my colleagues, that we need to redouble our efforts to promote wireless service in rural areas. The Commission has specific and significant statutory obligations to ensure that we manage the spectrum to the benefit of rural Americans. In response, the Chairman agreed to initiate last-year's NOI in this proceeding, which has now yielded this important NPRM. So, I'd like to thank him.

I support this NPRM, whole-heartedly in some places, with reservations in others. We seek comment on how to determine what areas are truly rural. We propose to allow higher power limits in areas where this will not unduly increase interference, in order to give rural carriers more coverage. We discuss the benefits of auctioning spectrum on an RSA basis, and ask where we ought to do so. And we ask how we can work with RUS in a more constructive way. All this goes down the right track.

I have reservations about other parts of this NPRM. For example, we seek comment on whether we should eliminate the cellular cross ownership rule in some rural areas. I am concerned that it may be a mistake to eliminate this rule and rely on an unpredictable case-by-case review process that it not guided by any written Commission standards. I am pleased that we tentatively conclude to keep the rule in markets where there are three or fewer carriers. Remember that while many cities boast six competitors, consumers in more than 25% of U.S. counties have three or fewer wireless carriers to choose from. So because we tentatively conclude to maintain the rule for the most vulnerable markets, and because we make no proposal on whether to eliminate the rule elsewhere, I can support this section of the item.

I am most concerned that the NPRM considers allowing companies to use their FCC licenses as collateral when seeking loans with the RUS. Spectrum and FCC licenses are not property. They should not be property. Congress is clear on this matter. If we allow companies to grant security interests in licenses we will be taking a big step toward spectrum propertization. This NPRM limits it questions to where the RUS, a part of the federal government, is the holder of the security interest. Because of this limitation, and because we do not make any proposal or tentative conclusion on the matter, I will support the item. But my deep concerns with granting authority to use FCC licenses as collateral

remain. In fact, they grow every day. This policy could well violate the Communications Act. I do not see how we can allow companies to use licenses as collateral without violating the intent of Congress to keep control and ownership of spectrum and licenses in the hands of American citizens rather than private interests.

From the time I first called for a proceeding on promoting rural wireless up to today, I have supported creative ways of achieving this goal. But we have to do some cost-benefit analysis here. I fear that allowing the use of security interests could provide precious little benefit compared to the potentially large cost to the spectrum management system. The marginal improvement in access to capital may be small, given that companies today can already grant security interests in stock and in the proceeds of a license sale. But the costs are potentially huge. Allowing security interests could undermine our authority in Sections 301 and 304 of the Act. The FCC's basic ability to develop wireless policy and manage interference could be threatened. If a court is convinced that an FCC decision to require additional CALEA compliance, E-911 public safety actions, or to change operations to reduce interference unduly puts the investment of a security interest holder at risk, could that court tie the Commission's hands? If so, we would be unable to do our job. Finally, after NextWave, we should be wary of decisions that put us at a disadvantage in bankruptcy disputes. Yet, allowing security interests creates great uncertainty in this context, and could lead to the Commission being unable to protect public funds when a licensee declares bankruptcy.

But this section of the item merely asks questions. Because of the limited nature of this section of the item, because we are not considering allowing any party other than RUS to hold a security interest, and because of the presence of these good probing questions, I can support this section of the item.

The Bureau has done a good job seeking comment on each of the worries that I just mentioned. I also want to acknowledge and thank my colleagues for working to make this a better item as we went through the deliberative process. I hope that people will pay attention to this proceeding and file comments. I want to especially encourage folks who share my doubts to respond fulsomely to this NPRM. We need to know the implications of this decision fully before acting. We certainly do not have the answers yet. So we need your help.