

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Market; WT Docket No. 00-230

Our approach to secondary markets requires an important balance. The Commission should encourage healthy and robust secondary markets. At the same time, we must ensure that license obligations continue to be satisfied and enforced. A regulatory framework for innovation should promote a secondary market that accommodates new technologies, but does not cause the Commission to lose or cede ultimate control over the spectrum.

I believe that today's Order accomplishes that delicate balance. By replacing the current facilities-based *Intermountain Microwave* standard with a new more flexible standard for determining *de facto* control, we take a significant step toward the creation of healthy and robust secondary markets, while also ensuring that license obligations required under our rules continue to be satisfied and enforced.

The development of secondary markets promises many benefits to the nation. A robust secondary market will increase access to spectrum, and will promote the development of new and innovative services for all Americans. I believe that it plays an important role in enabling the electromagnetic spectrum, a finite public resource, to be used more effectively and efficiently.

I am particularly hopeful that the development of secondary markets will increase access to spectrum in rural areas. I have heard time-and-time-again that the Commission's policies to improve access to spectrum have fallen short of our goal of providing service to rural and other underserved areas. Today, we remove significant regulatory obstacles and provide a framework for allowing licensees to lease more easily unused spectrum to entities that will use it. In doing so, we move closer to achieving our goal of ensuring that all areas of the nation receive the full benefits of advanced wireless services.

I also believe that increased access to spectrum can lead to increased opportunities for innovation in spectrum services and increased opportunities for new entrants who have developed the latest technologies.

When making decisions, such as those we do today, the Commission always must consider whether they are consistent with the applicable statute. We then must determine whether our decisions are in the public interest. This is an important two-pronged review. The analysis contained in the Order confirms that our actions are consistent with Section 310(d) of the Communications Act. And I believe that the public interest dictates that we utilize the available spectrum to the best of our ability.

However, in making this determination, we also must carefully balance the advantage of a higher valued use of the spectrum with the potential challenges we face when we allow licensees the freedom we grant them today. For the greater good, I choose to embrace the possibilities that our decision envisions and deal separately with the potential pitfalls. This is where our enforcement capacity becomes so very important.

While I am optimistic about our decision today, I must highlight my belief that the Commission's enforcement authority is critical to ensuring that this new regulatory environment is a success. We must make sure that not only the entities using spectrum are in compliance with our rules, but also that the Commission is capable and fully willing to enforce those rules. This enforcement authority, I believe, is particularly critical to instill confidence in the secondary markets. This is even more important when

spectrum will be leased frequently and will be used for a wide variety of purposes and by a wide variety of entities.

Finally, I do have concerns with our request for comment on allowing public safety licensees to potentially lease out their spectrum. I am unsure whether such flexibility would be in the public interest, but I believe that developing the record on this issue is appropriate to enable us to fully analyze the issues involved. I encourage all interested parties to fully comment on this portion of the Further Notice.

I have similar concerns about our request for comment on possible forbearance with respect to certain transfers and assignments. I am not convinced that there is such a problem with our current transfer and assignment rules and procedures that would warrant a determination to forbear from requiring prior approval for certain transfers and assignments. More importantly, I think such a proposal may raise statutory concerns, and I look forward to reviewing the record on all aspects of the issue.

I do, however, appreciate the cooperation of my colleagues in making other changes to the Further Notice that allow me to fully support the item before us.

I support the development of secondary markets, and I support this Order. I look forward to working on the issues raised in the Further Notice to ensure that we achieve successful secondary markets and the full utilization of the nation's radio spectrum consistent with a framework for innovation. I also will continue to be mindful of the Commission's important role in managing our nation's spectrum, and the important role enforcement will play in ensuring a vibrant and stable secondary market.