

**STATEMENT OF**  
**COMMISSIONER MICHAEL J. COPPS**

*Approving in part, dissenting in part*

July 8, 2004

*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.*

When I asked for this proceeding to be initiated a number of years ago, my hope was that the Commission could find a way to improve our efforts to promote wireless service in rural areas. Anyone who lives in rural America knows first hand that rural consumers have fewer choices of carriers, more holes in their coverage, and that there are still areas of our country that have no service at all. I hoped that this proceeding would begin a serious process of establishing a real strategy at the Commission for how to bring the power of wireless communications more fully to rural Americans. But I believe we come up short today.

There are things I support in this Order. On the positive side, we begin the process of giving carriers the authority to increase power in rural areas where interference will not be a problem. This will reduce the costs of serving these areas, and it's a good step that I applaud. We also state that we will continue our practice of deciding on the size of auctioned areas on a case-by-case basis, rather than auctioning everything on a nationwide basis. Having a mix of large and small areas is also good for rural America. I hope that these efforts will help rural consumers, but by themselves they are not going to get the job done.

So what is the FCC's plan to bring better service to rural America? First, we eliminate the rule that prohibits cellular carriers from merging. No rule will henceforth prevent carriers from merging even when there are only two competitors in the market and the merger would result in a monopoly for rural consumers. Last year we tentatively concluded that the cellular cross interest rule should remain in place where there are three or fewer competitors in a market. But the majority rejects this tentative conclusion, and eliminates the rule that protects the most vulnerable consumers. Instead we'll rely on unpredictable case-by-case review unguided by any written Commission standards at all. Unfortunately, that's the first part of the FCC's new plan to help rural wireless consumers.

Second, the FCC will maintain the rule that allows companies to meet their build out requirements by serving only urban markets and ignoring rural customers. Rural carriers have asked to improve the situation with a "use-it-or-lose-it" rule, where if a carrier fails to use its rural spectrum it is returned to the Commission after a period of years to be re-auctioned to someone who will use it. Sounds like a reasonable way to

meet our obligations to rural America and to ensure that public spectrum is put to its highest and best use. But today the Commission refuses this request. Instead we push off use-it-or-lose-it into another interminable NPRM, and give national carriers the option, but no requirement, to meet existing rules by serving a percentage of rural counties instead of the cities in each market. How many carriers do you think will chose to build out rural areas ahead of lucrative cities without further incentive or rules under this new plan? Not many. Nonetheless, rejecting use-it-or-lose-it is the second part of the FCC's curious plan for rural America.

Third, we allow, for the first time, corporations to mortgage their spectrum licenses, essentially allowing them to use a public asset as collateral when seeking loans. I don't see how we can allow this without violating the Communications Act and the intent of Congress. The marginal improvement in access to capital will be small, given that companies today can already grant security interests in stock and in the proceeds of a license sale. But 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 the NextWave disaster, 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. While limiting potential interest holders to our friends at the RUS arguably mitigates some policy concerns, it does not change the legal analysis, and it's just a short step from here for the Commission to parlay today's action into one allowing private banks to hold mortgages in public licenses. Despite the risks and the limited benefit, this is the third part of the FCC's new plan for helping rural America.

I think this item steers us in the wrong direction. We can talk the talk about helping rural America all we want. But someday we're going to have to walk the walk and get the job done. Today we trip.