

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

Approving in Part, Concurring in Part

Re: The 4.9 GHz Band Transferred from Federal Government Use, Memorandum Opinion and Order and Third Report and Order, WT Docket No. 00-32

I am in strong support of establishing licensing and service rules for the 4.9 GHz band, and I believe that our action today will give public safety professionals across the country access to new spectrum and will further the trend of putting cutting-edge communications technologies to use in saving lives. I look forward to the development of new products designed to use the 4.9 GHz band. I commend the public safety community for pushing the Commission to take today's action and the bureaus for seeing the challenge through.

We have all been working to facilitate the ability of police departments, fire departments and utilities companies to interact using wireless technologies. Communications between these entities is, as we all understand now, critical in times of emergency. The 4.9 GHz band has the potential significantly to improve such communications, especially by allowing government public safety organizations to access utility companies' public safety oriented communications and monitoring activities.

I concur in part, however, because I am concerned that the Commission may at the same time be creating a bit of confusion and perhaps even future disputes by failing to protect against possible misuse of this band by private companies for non-public safety activities. We need to be vigilant to make sure this does not happen.

The way I read it, today's Order establishes a system whereby government users can enter into agreements to grant private companies access to public safety spectrum, for free, without adequate restrictions on how these private companies can use the spectrum.

While all operations in the band are supposed to be "limited to operations in support of public safety," the types of activities that are "in support of public safety" are not defined. The term "public safety services" *is* defined, but very broadly -- any service with the "principal purpose" of "protecting life, health, or property" is covered. Additionally, the text allows all types of private companies that are not utilities or in other public-safety oriented businesses to access the spectrum. That presumably means that 49% of a company's use of the band could be generally unrelated to public safety, and 51% could be used to protect the company's private facilities. If this result is indeed possible, I would have to ask: is this really the best use of our public safety spectrum?

I am somewhat reassured by the item, however, because a public safety entity must grant a private company permission before any of this can occur, and I believe that utilities companies are dedicated to public safety. So, most police departments and fire departments will not allow their 4.9 GHz spectrum to be used for inappropriate activities. And utility companies across the country are generally very dedicated to protecting public safety and often go beyond the call of duty to make their communities safer. Responsible companies will not take advantage of any vulnerabilities that might exist.

But we went through a similar experience with ITFS. Even though the majority of licensees use the spectrum with which we entrust them well, when the Commission leaves open

the opportunity for abuse, there will be some who will take advantage of it. Just as every school did not use its ITFS spectrum responsibly, every public safety entity will not be an effective filter for misuse.

As I mentioned, nothing in our rules appears to restrict the private companies that can use this band to utility companies. So companies far less public safety oriented than utilities may be able to strike deals to use the spectrum for their own ends. And our “in support of public safety” language is overly porous. We must not allow any kind of abuse to undermine the promise of the 4.9 GHz band for the public safety activities of both governments and utilities.

Closing on a more positive note, I believe the item is generally a significant step forward in the Commission’s ongoing efforts to enhance public safety throughout the land, and I thank the bureaus for bringing it to us this morning.