STATEMENT
of
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FEDERAL COMMUNICATIONS COMMISSION

Before the
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

April 15, 2008

Good morning Mr. Chairman, Ranking Member Stearns and distinguished members of the Subcommittee. Thank you for inviting us to appear before you this morning to discuss the recently completed 700 MHz auction, known as Auction 73.

As you know, Auction 73 raised a record amount of revenue, over $19 billion. The auction also succeeded in reallocating this valuable slice of the airwaves to licensees who will use it to roll out new and exciting wireless broadband services, enriching the lives of all Americans.

Nonetheless, we are here today because two important objectives of the auction were *not* met. First, the FCC failed to entice a winning bidder to build a state-of-the-art, nationwide, interoperable network for America's public safety users. Second, the FCC failed in its quest to attract a new national broadband provider, the much-sought-after "third pipe." Today gives us an opportunity to move beyond rhetoric, analyze the lessons learned and move forward - together - in a constructive manner.

Last summer's 700 MHz Order included a plan to spark a public/private partnership by allocating 10 megahertz of spectrum for public safety use, known as the "D Block." This spectrum block was added on top of the 24 megahertz Congress allocated to public safety in 1997. The Commission created this framework after working closely with the public safety community, and I supported it. Hopes were high that this additional spectrum would provide an incentive for a private entity to construct a nationwide, interoperable, broadband network all of us have been discussing since the attacks of 9-11.

Even though public safety already had at its disposal 97 megahertz of spectrum in total to serve America's approximately two million public safety users – including 24 megahertz in the "beach front" quality 700 MHz Band, and 50 megahertz in the 4.9 GHz Band – the

Commission allocated an *additional* 10 megahertz above and beyond what Congress gave. We did this to try to create an incentive for the private side of the public/private partnership to invest risk capital to build a nationwide public safety network suitable for 21st century challenges. In the absence of congressionally-appropriated funding for this network, the Commission concluded that this type of public/private partnership was the best way to jump-start funding and construction.

I have met with a number of parties since the anti-collusion prohibitions were lifted. Early critiques of the Commission's efforts reveal that potential bidders were deterred by onerous build-out and service requirements that required the eventual licensee to incur massive costs in an atmosphere of extreme uncertainty regarding how many, if any, public safety entities might actually sign up as paying customers. I am eager to put this matter out for additional public comment and also to hear from Congress regarding new ideas.

A positive attribute of our order was the band plan for the remaining commercial blocks of the 700 MHz spectrum, which I also supported. The band plan we established was comprised of four spectrum blocks of various sizes (ranging from six to 22 megahertz), each of which was divided into a mix of geographic area sizes, including Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Area Groupings (REAGs). The plan was advocated by a broad array of interested parties, including possible new entrants, technology companies, as well as existing wireless license holders. I was hopeful that the band plan, minus the open access requirement, would provide new opportunities for a wide variety of technologies and business plans.

With respect to the open access condition, which was imposed on the large, 22-megahertz portion of the band known as the "C Block," I acknowledged that while we could

agree on the destination – a market that provides consumers with device and application portability – my colleagues and I could respectfully disagree about the best path to take us there. At the same time, I was disappointed that the majority did not try to work with industry to forge a consensus solution rather than rush to regulate without thinking through possible unintended consequences.

I cast the only dissent against the open access requirements because the evidence in the record told me that the market was already headed toward open access through natural evolution. I also did not think that the plan would achieve the advertised goal of attracting new broadband competition. Additionally, as I pointed out in my dissent, I was concerned that larger carriers would avoid the encumbered C Block and outbid smaller players in the smaller, unregulated spectrum blocks. Sadly, it appears that my fears proved to be correct, but I wish I had been wrong.

Here is what we know: the price for the "open access" C Block was 77 cents per megahertz pop, and it was purchased not by a new entrant, but by a large incumbent wireless carrier. On the other hand, the average price of the unencumbered B Block was an unprecedented $2.65 per pop. Even the A Block, unencumbered, but which some had argued was "less desirable" because it neighbors with higher-powered broadcast operations and thus might be susceptible to harmful interference, went for an average of $1.13 per pop.

The bottom line is that the smaller unencumbered blocks sold on average for almost three times more than the larger, more regulated block. Large and small players have already commented that the encumbrance on the C Block had an effect on pricing because bidders put a premium on the clean spectrum. Acting in an economically rational manner, large

incumbents outbid many smaller players in smaller blocks. Smaller players had nowhere else to go, all while no new broadband provider emerged.

Comparing the numbers of licenses won with bidding credits in prior auctions with those won in Auction 73 is imprecise at best. The fact is, in Auction 73, more than half of the spectrum (32 of the 62 megahertz) was available only in nationwide slices. The 10 megahertz D Block was carved into a nationwide license at the outset. And, although carved into REAGs, in practical terms, the 22 megahertz C Block was available only as a nationwide license due to the combinatorial package bidding allowed in that band. Thus, the open access condition aside, the C Block was not a realistic option to either those regional and smaller entities seeking to bolster holdings in an existing service area, or to those potential new entrants that would need a good deal of bandwidth, while desiring to purchase more conservatively. As a result, the 379 licenses won with bidding credits in Auction 73 overwhelmingly comprise only the smallest markets as measured by depth (the amount of megahertz afforded in each), breadth (the geography covered and pops served), or both.

In their defense, I do not think that my colleagues intended these consequences to be the end result. And perhaps that is the point: the lesson we can draw from this experiment-gone-awry is that attempts to over-engineer markets always produce unintended consequences and costs – costs that ultimately *consumers* will pay. The auction's legacy may be less innovation and less competition, not more; and consumers may be short-changed as a result. But we may never know for sure.

Make no mistake, I support licensees rolling out open networks if consumer demand so warrants. Nothing under the Commission's prior rules has prevented this development. In fact, the biggest unwritten story is that nascent device and application portability were already

coming to market long before the FCC got involved last summer. Take, for example, the efforts of two carriers that, in 2006, launched dual-mode cellular-Wi-Fi handsets designed to make voice calls on cellular GSM networks and at Wi-Fi hot spots - both at home and in public - using voice-over-Wi-Fi technology, with seamless handoff between the two types of networks. Or the November 2007 introduction of Android, a Linux-based software stack that consists of an operating system, middleware, a user interface and applications, which had been in development since 2006. Or last fall, and after more than a year in the making, even the two largest wireless carriers each announced initiatives to allow customers to use any wireless device and to employ elective applications on their respective networks. In short, consumers were already starting to breach the walled gardens of yesterday *well before* the FCC rendered its mandate.

It is also worth briefly noting that, even now, it remains unclear as to what "open access," in the form of a government mandate, means. It may be that the winning bidder will define this term in the end, but that remains an unanswered question for now. Then again, many important questions remain unanswered, and that is why we are here today: to try to arrive at some answers so we can move forward together.

Conclusion. At the end of the day, I respectfully submit that the lesson learned from this auction is that we policy-makers should proceed mindful of the unintended consequences of our actions, especially as technologies and consumer tastes evolve. Again, thank you for having us here today. I look forward to working with you on these and many other challenges.