

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Cellular Telecommunications Industry )  
Association *et al.*'s Request for Delay of the )  
Auction of Licenses in the 747-762 and 777-792 )  
MHz Bands Scheduled for )  
September 6, 2000 (Auction No. 31) )

**MEMORANDUM OPINION**

**Adopted: July 31, 2000**

**Released: September 12, 2000**

By the Commission: Commissioners Furchtgott-Roth and Tristani dissenting and issuing a joint statement.

**I. INTRODUCTION**

1. We have before us a request by the Cellular Telecommunications Industry Association and nine members of the wireless telecommunications industry ("CTIA *et al.*") to delay the auction of the 10 MHz and 20 MHz commercial licenses in the 747-762 and 777-792 MHz bands (Auction No. 31) by nine months until June 2001.<sup>1</sup> As announced in a Public Notice issued July 31, 2000, after reviewing the requests and other expressions of support for the request, we elected to postpone the auction until March 6, 2001.<sup>2</sup> This Memorandum Opinion memorializes our decision.

**II. BACKGROUND**

2. The 746-764 and 776-794 MHz bands ("700 MHz band") have been used by television stations on UHF channels 60-62 and 65-67. The Balanced Budget Act of 1997 directed the Commission to reallocate this spectrum from broadcast use to commercial use by December 31, 1997,<sup>3</sup> but not to commence competitive bidding for the commercial licenses on the reallocated spectrum before January 1, 2001.<sup>4</sup> The incumbent television stations, however, are not required to vacate the spectrum before December 31, 2006, and that date may be extended under certain circumstances.<sup>5</sup> In November 1999, as

<sup>1</sup> Letter from the Cellular Telecommunications Industry Association, AT&T Wireless Services, Inc., BellSouth Corporation, Ericsson Inc., Motorola, Inc., Nextel Communications, Inc., Qwest Wireless, L.L.C., SBC Communications, Inc., Verizon Wireless, and VoiceStream Wireless, to Chairman William E. Kennard, Federal Communications Commission, dated July 20, 2000 ("CTIA *et al.* Letter").

<sup>2</sup> "Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until March 6, 2001," WT Docket No. 99-168, *Public Notice*, FCC 00-282, 15 FCC Rcd 13954 (rel. July 31, 2000).

<sup>3</sup> See Section 337(a) of the Communications Act, 47 U.S.C. § 337(a), as added by § 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>4</sup> See Section 337(b)(2) of the Communications Act, 47 U.S.C. § 337(b)(2)(a).

<sup>5</sup> See 47 U.S.C. § 309(j)(14).

part of the Consolidated Appropriations Act, 2000, Congress accelerated the auction schedule and required that the Commission “conduct the competitive bidding process in a manner that ensures that all proceeds of such bidding are deposited in accordance with Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) not later than September 30, 2000.”<sup>6</sup>

3. On January 7, 2000, we adopted a band plan for the 700 MHz band. We provided for a 20 megahertz band, a 10 megahertz band, and two small “guard bands” of 2 and 4 megahertz.<sup>7</sup> On January 10, 2000, the Wireless Telecommunications Bureau (“Bureau”) announced that the auction of the 10 MHz and 20 MHz blocks (Auction No. 31) would commence on May 10, 2000, and sought comment on the establishment of various auction procedures.<sup>8</sup> On March 10, 2000, the Bureau announced that the auction of the guard bands (Auction No. 33) would commence on June 14, 2000.<sup>9</sup>

4. Several parties subsequently asked that Auction No. 31 be postponed to provide for additional time to prepare. In response to these requests, the Bureau postponed both Auction No. 31 and Auction No. 33 until September 6, 2000, “in order to provide additional time for bidder preparation and planning.”<sup>10</sup> In a letter to Senators Ted Stevens, Judd Gregg, and Pete V. Domenici, Chairman Kennard described the reasons for the delay.<sup>11</sup> He stated that he had serious concerns about the compressed timing for these auctions. Chairman Kennard noted that Section 309(j)(3)(E)(ii) of the Communications Act requires that the Commission “ensure that interested parties [potential bidders] have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.”<sup>12</sup> The letter further explained that postponing the auction would allow potential bidders to develop better business plans and bidding strategies and to form strategic alliances. Chairman Kennard also noted that postponing the auction might prevent the Commission from complying with the schedule set forth in the Consolidated Appropriations Act, 2000. The letter stated that the Commission

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<sup>6</sup> Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213; see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); see also 47 U.S.C.A. § 337 Note at Sec. 213(a)(3).

<sup>7</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *First Report and Order*, FCC 00-5 (rel. Jan. 7, 2000) at ¶ 30, 15 FCC Rcd 476, 489 (2000). The “guard band” is so-named because it is immediately adjacent to spectrum used for public safety purposes and has service rules designed to protect that spectrum from unwarranted interference.

<sup>8</sup> See “Auction of Licenses in the 747-762 and 777-792 MHz (“700 MHz”) Bands Scheduled for May 10, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues,” *Public Notice*, DA 00-43 (rel. Jan. 10, 2000).

<sup>9</sup> See “Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues,” *Public Notice*, DA 00-559 (rel. March 10, 2000).

<sup>10</sup> “Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until June 7, 2000,” *Public Notice*, DA 00-573 (rel. Mar 17, 2000); “Auction of Licenses for the 700 MHz Guard Bands Postponed Until September 6, 2000,” *Public Notice*, DA 00-941 (rel. May 2, 2000); “Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until September 6, 2000,” *Public Notice*, DA 00-942 (rel. May 2, 2000).

<sup>11</sup> Letter to Senator Ted Stevens, Chairman of the Senate Appropriations Committee, Senator Judd Gregg, Chairman, Committee on Appropriations, Subcommittee on Commerce, Justice, State, and the Judiciary, and Senator Pete V. Domenici, Chairman of the Senate Budget Committee, from Chairman William E. Kennard, Federal Communications Commission, dated April 27, 2000 (“Kennard April 27, 2000 Letter”).

<sup>12</sup> *Id.*

had been working diligently to satisfy that Congressional mandate but, as a matter of spectrum policy, a delay was warranted.<sup>13</sup>

5. On July 20, 2000, CTIA *et al.* submitted its request that Auction No. 31 be delayed until June 2001, but that the “guard band” auction continue as scheduled.<sup>14</sup> CTIA *et al.* noted that the 700 MHz spectrum is ideally suited for next generation mobile and high-speed broadband services. They stated, however, that it was difficult, if not impossible, for bidders to develop business plans, formulate strategies and assess market conditions under the current auction schedule. Specifically, they argued that now that the Commission has clarified several issues regarding voluntary negotiations between new 700 MHz licensees and incumbent broadcasters,<sup>15</sup> the Commission should allow parties a sufficient period of time for negotiations to occur. They further stated that regardless of the outcome of those negotiations, additional time will lead to greater certainty thus aiding bidders in formulating their business models and bidding strategies. CTIA *et al.* also noted that while the Commission sought comment on a number of possible band-clearing mechanisms in a *Further Notice of Proposed Rulemaking* (“*Further NPRM*”),<sup>16</sup> the reply comments to the *Further NPRM* would not be due until after Auction No. 31 is scheduled to begin; thus, bidders would have to participate in the auction without knowing what additional policies the Commission might adopt in this area. This uncertainty, they contended, would discourage participation in the auction and create substantial and unacceptable risk for bidders. CTIA *et al.* also argued that because the package bidding procedures the Bureau adopted for Auction No. 31<sup>17</sup> are complex and have never been used in a Commission auction, bidders need additional time to develop software and auction analysis tools that are essential in formulating their bidding strategies. Also on July 20, 2000, Paxson submitted a letter supporting a delay of Auction No. 31 but only if Auction No. 31 and the guard band auction (Auction No. 33) are held simultaneously and are completed by December 20, 2000.<sup>18</sup>

### III. DISCUSSION

6. In deciding whether to grant the requests to postpone Auction No. 31, we face conflicting statutory requirements. We have a statutory mandate to design our auction rules and procedures so as to

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<sup>13</sup> In response, Senator Pete V. Domenici explained that the purpose of the accelerated auction schedule was to provide a budget offset so that fiscal year appropriations would not exceed spending limits established in law and urged the Commission to balance the competing interests to ensure that the auction “is fair, puts the spectrum to the best use, and best serves the public interest.” Letter to Chairman William E. Kennard from Senator Pete V. Domenici, Chairman, Senate Budget Committee, dated May 5, 2000.

<sup>14</sup> CTIA *et al.* Letter.

<sup>15</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224 at ¶¶ 39-66 (rel. June 30, 2000).

<sup>16</sup> See *id.* at ¶¶ 80-105.

<sup>17</sup> See Public Notice, “Auction of Licenses in the 747 – 762 and 777 – 792 MHz Bands Scheduled for September 6, 2000 Procedures Implementing Package Bidding For Auction No 31, DA 00-1486 (rel. July 3, 2000).

<sup>18</sup> Letter from Lowell W. Paxson, Paxson Communications Corporation, to Chairman William E. Kennard, Federal Communications Commission, dated July 20, 2000, at 1 (“Paxson Letter”). However, both the Industrial Telecommunications Association (“ITA”) and Motorola, Inc. strongly oppose any postponement of the guard band auction. Letter from Mark E. Crosby, ITA, to Chairman William E. Kennard dated July 21, 2000 at 1-2; Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000, *Public Notice*, DA 00-1075, Comments of Motorola, Inc. at 1-4.

manage the radio spectrum effectively and efficiently in the public interest.<sup>19</sup> Section 309(j) provides that, in designing auctions, “the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of the Act and the following objectives . . . .”<sup>20</sup> One of those objectives specifically addresses the scheduling of auctions: it requires the Commission to “ensure that, *in the scheduling of any competitive bidding* . . . an adequate period is allowed . . . after the issuance of bidding rules to ensure that interested parties have sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.”<sup>21</sup> Congress added this provision “to ensure that scarce spectrum is put to its highest and best use.”<sup>22</sup> CTIA *et al.* argued that the auction schedule for the 700 MHz auction did not fulfill our duty under this requirement. On the other hand, Section 213 of the Consolidated Appropriations Act, 2000 requires the Commission to conduct the auction of the 700 MHz spectrum so as to have the auction proceeds deposited with the Treasury by September 30, 2000, the end of fiscal year 2000.<sup>23</sup> The request of CTIA *et al.* therefore required that we resolve the tension between these competing statutory provisions.

7. If Congress had spoken directly to the issue, that is, if it told us which of the provisions was to take precedence, our inquiry would end.<sup>24</sup> However, where “the language of one statutory phrase, however ‘plain’, collides with the literal command of another or of the statute as a whole, the resulting ambiguity necessitates extrinsic evidence of legislative intent to reconcile the conflict.”<sup>25</sup> Our inquiry is guided by *Western Coal Traffic League v. Surface Transportation Board*, recently decided by the U.S. Court of Appeals for the District of Columbia Circuit.<sup>26</sup> In that case, petitioners challenged the Surface Transportation Board’s issuance of a fifteen-month moratorium on the filing of merger applications despite a statutory requirement to decide merger applications within sixteen months. The court first held that “the statute does not address the unanticipated conflict this case presents between the process by which the Board is to review a proposed merger and the purposes for which the Board is to conduct its review.”<sup>27</sup> The court then noted that while it would not be illogical to infer that the Board’s moratorium was unreasonable in light of Congress’s intent to expedite merger review, “[w]e are persuaded otherwise . . . by the numerous cases upholding agency decisions to defer actions mandated by statute . . . where doing so is administratively necessary in order to realize the broader goals of the same statute . . . .”<sup>28</sup> The

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<sup>19</sup> See 47 U.S.C. § 309(j)(3), (4).

<sup>20</sup> 47 U.S.C. § 309(j)(3).

<sup>21</sup> 47 U.S.C. § 309(j)(3)(E)(ii) (emphasis added).

<sup>22</sup> H.R. Conf. Rep. No. 105-217, 143 Cong. Rec. H6173 (daily ed. July 29, 1997).

<sup>23</sup> Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(3), reprinted in 47 U.S.C.A. § 337 Note at Sec. 213(a)(3).

<sup>24</sup> See *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984).

<sup>25</sup> *Montana v. Clark*, 749 F.2d 740, 745 (D.C. Cir. 1985).

<sup>26</sup> *Western Coal Traffic League v. Surface Transportation Board*, No. 00-1115, 2000 WL 869452 (D.C. Cir. July 14, 2000).

<sup>27</sup> *Id.* at \*4.

<sup>28</sup> *Id.*

court also noted that it had decided numerous cases involving specific statutory deadlines, and that in such cases it had considered whether the agency had demonstrated a reasonable need for the delay “in light of the duties with which it has been charged.”<sup>29</sup> The court upheld the Board’s action, concluding that “[n]either the statute nor the legislative history give any indication that Congress considered compliance with the timeline in [the statute] more important than the substantive purposes for which the Board reviews merger applications.”<sup>30</sup>

8. In the situation before us, we conclude that Congress did not directly resolve the tension between Section 213 of the Consolidated Appropriations Act, 2000, and Section 309(j)(3)(E)(ii) of the Communications Act. As was true in *Western Coal Traffic League v. STB*, we find no indication that Congress considered compliance with the September 30, 2000, deadline more important than compliance with its specific mandate that in scheduling auctions we ensure there is sufficient time for bidder preparation or the direction that we conduct auctions in a manner that promotes competition, innovation, and efficient use of the spectrum. Our conclusion is buttressed by the text of Section 213 itself. Section 213 provides that, in order to expedite the auction of the 700 MHz spectrum, several provisions of other statutes (*e.g.*, parts of the Paperwork Reduction Act) and two specific provisions of the Communications Act shall not apply to the rules and bidding procedures established for the auction.<sup>31</sup> Where Congress wished to exempt the 700 MHz auctions from existing law, it knew how to do so. Because, however, Section 213 does not provide that the 700 MHz auctions are exempt from any other provisions of the Communications Act, we conclude that Congress did not specifically intend that we ignore the statutory directions of Section 309(j) or other provisions of the Communications Act. In this regard, we also note that the Commission has previously postponed an auction in the face of similar conflicting statutory demands, an action of which Congress was well aware.<sup>32</sup> We therefore conclude that by enacting Section 213, Congress did not intend that we absolutely be foreclosed from doing so again, under the appropriate (and rare) circumstances set forth in this Memorandum Opinion.

9. Having concluded that Congress did not speak to the direct question, in deciding whether to grant the request to postpone the auction, we are charged with balancing the conflicting provisions. As explained below, we conclude that a further postponement of Auction No. 31 is warranted and best achieves our responsibilities under the Communications Act to manage the radio spectrum in the public interest. First, we credit the argument of CTIA *et al.* that beginning the auction on September 6 would not satisfy our obligation under Section 309(j)(3)(E)(ii) that in scheduling an auction we must provide bidders with sufficient time to develop business plans and assess market conditions. It is undisputed that the factors surrounding the 700 MHz spectrum, including the incumbency of the UHF television broadcasters, make bidder planning for this auction unusually complex. Under normal circumstances, we would give bidders additional time to prepare for an auction. In addition, we have an excellent

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<sup>29</sup> *Id.* at \*6 & n.\*. In this regard, the court found instructive mandamus proceedings involving claims of unreasonable agency delay. In such cases, the court noted that “the specificity of the statutory timetable is merely one of six factors we consider.” *Id.* (citing *Telecommunications Research and Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984)).

<sup>30</sup> *Id.* at \*7.

<sup>31</sup> Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)-(6).

<sup>32</sup> See Allocation of Spectrum below 5 GHz Transferred from Federal Government Use, *Fourth Report and Order*, 13 FCC Rcd 23830, 23834 ¶ 7 & n. 20 (1998) (describing postponement of General Wireless Communications Service, which made impossible meeting statutory requirement that spectrum be licensed by August 9, 1998).

opportunity to undertake combinatorial (package) bidding with this spectrum.<sup>33</sup> While the Bureau would have been operationally prepared to implement combinatorial bidding, the bidders – even those supportive of package bidding – claim they could use more time to prepare for this new bidding approach. We are aware of no potential bidder or member of Congress who opposes CTIA *et al.*'s request or rationale.<sup>34</sup> Second, we note that in the *700 MHz Memorandum Opinion and Order and Further NPRM*, we provided additional guidance regarding voluntary band clearing agreements in the belief that such agreements would result in the efficient use of the electromagnetic spectrum and advanced several proposals that might assist in clearing the 700 MHz spectrum and accelerating the DTV transition. Under the previous schedule, there was insufficient time for parties adequately to explore voluntary band clearing agreements before the auction took place. We also would not have considered comments on the new proposals in the *Further NPRM* until after the auction began. Postponing the auction, however, provides much needed opportunity for parties to develop positions and plan for, and even begin to negotiate, spectrum clearing agreements, thereby increasing the efficient use of the spectrum. It also permits us to reach decisions regarding our proposals and, more importantly, allows time for any proposals we might adopt to be utilized by the parties.

10. Third, we note that parties have commented that in order to allow them to properly assess their spectrum needs, the 700 MHz auction should follow the close of the C and F block auction scheduled to begin November 29, 2000. We believe that this is another factor in favor of postponing the auction. Finally, we believe that postponing the auction does not contravene the Congressional intent behind Section 213 of the Consolidated Appropriations Act, 2000. The underlying purpose of that provision was not related at all to the Commission's core function of managing spectrum but was strictly budgetary.<sup>35</sup> That purpose is no longer applicable; the budgetary results Congress was seeking to achieve in including the auction deadline in last year's appropriation legislation have been met regardless of when the receipts from the auction are deposited in the Treasury.<sup>36</sup> We therefore do not believe taking action at this time to postpone the auction undermines the intent of the provision.<sup>37</sup>

11. In complying with conflicting statutes, and resolving those directives as we proceed toward an auction, we believe the Commission's primary goal should be to conduct an auction that is fair, efficient, puts the spectrum to the best use, and thereby best serves the public interest. We also believe that it is of utmost importance that we allocate and assign as valuable a resource as the 700 MHz spectrum in a manner that comports with the specific statutory requirements of the Communications Act

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<sup>33</sup> See 47 U.S.C. § 309(j)(3) (requiring Commission to design and test combinatorial bidding system).

<sup>34</sup> See *House Panel Members, Carriers, Urge FCC to Delay 700 MHz Auction*, Communications Daily, July 20, 2000, at 3-4 (citing statements of Representative Billy Tauzin, Representative Rick Boucher, and Representative Cliff Stearns).

<sup>35</sup> See Letter to Chairman William E. Kennard from Senator Pete V. Domenici, Chairman, Senate Budget Committee, dated May 5, 2000, at 1 (purpose of statute was "purely budgetary," *i.e.*, to provide offset for fiscal year 2000 appropriations and to ensure that none of the Social Security surpluses would be spent).

<sup>36</sup> See *id.*

<sup>37</sup> See also *House Panel Members, Carriers, Urge FCC to Delay 700 MHz Auction*, Communications Daily, July 20, 2000, at 3-4 (citing Congressional statements favoring postponing auction); Letter to Chairman William E. Kennard from Senator Pete V. Domenici, Chairman, Senate Budget Committee, dated May 5, 2000 ("Because our goal of protecting Social Security surpluses has been achieved for this year, I am satisfied that your decisions regarding the auction date will be an appropriate one, given the myriad statutory requirements applicable to the Commission.").

governing spectrum management and spectrum auctions. Although the Commission takes congressional deadlines very seriously, upon weighing the statutory obligations of the Consolidated Appropriations Act, 2000 against those in our charter statute, the Communications Act, we believe that in these unique circumstances, postponing the auction appropriately balances our responsibilities in a manner that best serves the public interest. We further believe that while CTIA *et al.* have requested a postponement of nine months, a postponement of six months will provide bidders with sufficient time to assess market conditions, develop business plans and otherwise prepare for the auction, while not unduly delaying utilization of the 700 MHz spectrum. We therefore postpone the start of Auction No. 31 for a period of six months until March 6, 2001.<sup>38</sup>

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>38</sup> The postponement of Auction No. 31 does not affect the guard band auction (Auction No. 33), which remains scheduled to begin on September 6, 2000. *See* Auction of Licenses for the 700 MHz Guard Bands Postponed Until September 6, 2000, *Public Notice*, DA 00-941 (May 2, 2000).

**DISSENTING STATEMENT OF COMMISSIONERS HAROLD FURCHTGOTT-ROTH  
and GLORIA TRISTANI**

*Re: Cellular Telecommunications Industry Association et al's Request for Delay of the Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000 (Auction No. 31) (rel. September 12, 2000).*

Today's Order provides the majority's rationale for the further delay of the 700 MHz auction beyond the statutorily determined time. Although we have already stated our opposition to that decision,<sup>1</sup> we nonetheless feel compelled to detail our concerns about the rationale advanced in the item.

The item asserts that "we face conflicting statutory requirements" and that "Congress ha[s] [not] spoken directly to the issue."<sup>2</sup> As a result, it concludes, "postponing the auction appropriately balances our responsibilities in a manner that best serves the public interest."<sup>3</sup> We do not agree.

Congress has spoken as directly and clearly as possible with regard to the timing of the 700 MHz auction: the FCC is to "conduct a competitive bidding process in a manner that ensures that all proceeds of such bidding are deposited . . . not later than September 30, 2000."<sup>4</sup> Despite the difficult circumstances challenging potential bidders in this auction, no "conflicting statutory requirement" can rightly be read into Section 309 of the Communications Act.

The item asserts that adherence to the statutory deadline cannot be reconciled with our charge under Section 309 to ensure that the scheduling of an auction allow "interested parties [to] have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services."<sup>5</sup> The circumstances cited in the item, however, do not suggest that potential bidders lack sufficient time to prepare for auction. The encumbered nature of the spectrum has been well known since Congress first reallocated the spectrum for commercial use in 1997. The Order specifically states that the Commission is prepared to run the auction, and potential bidders have offered no credible operational reason not to move ahead. And a preference to conduct this auction after the C and F block reauction cannot be used to manufacture a conflict in the statute. Most importantly, the essential facts regarding this auction are the same today as they were when the deadline was adopted. Nothing has changed; the spectrum remains encumbered.<sup>6</sup>

No "conflicting statutory requirement" exists here and Section 309 should not be interpreted to create such a conflict. The 700 MHz auction poses challenges, but these issues cannot be used to jettison a statutory mandate. In essence, the Order holds that the statutory deadline makes bad policy and now the FCC is going to fix it. We do not believe that this is, or should be, our role.

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<sup>1</sup> *Dissenting Statement Of Commissioners Harold Furchtgott-Roth And Gloria Tristani, Re: Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until March 6, 2001, Public Notice (rel. July 31, 2000).*

<sup>2</sup> Order at ¶¶ 6-7.

<sup>3</sup> *Id.* at ¶ 11.

<sup>4</sup> Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213.

<sup>5</sup> 47 U.S.C. § 309(j)(3)(E)(ii).

<sup>6</sup> Nor are these essential facts likely to change between now and the newly delayed auction date.