

**CONCURRING STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269*

I share the concerns of my colleagues and many stakeholders that today's process for evaluating carriers' spectrum holdings is flawed. In my view, our framework has failed to keep pace with the evolving marketplace and is simply unpredictable.

On the first point: Our spectrum screen currently fails to account for all spectrum suitable for mobile broadband. This includes spectrum in the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) that companies like Clearwire are using today to provide 4G service across America. And our approach to spectrum attribution assumes that one company gains *de facto* control of another even if it holds no more than 10% equity. Together, these factors ensure that our current process for evaluating spectrum holdings consistently understates competition in the marketplace.

On the second point: Our approach to evaluating carriers' spectrum holdings creates needless regulatory uncertainty. As carriers plan their investments to meet consumer demand, they need to know the rules of the road, namely, which purchases will trigger the spectrum screen and which won't. Unfortunately, that is not the case today. Instead, we only consider whether to adjust the screen on an ad hoc, transaction-by-transaction basis.

Although there is substantial room for improvement when it comes to the spectrum screen, there is little consensus when it comes to identifying particular problems, let alone specific solutions. Some think that the screen includes too little spectrum; others, too much. Some favor the imposition of a hard cap; others support a more flexible case-by-case approach. Some want to weigh different spectrum bands differently; others believe taking that step would be counterproductive. I could go on, but you get the point.

It is for this reason that I find it odd that outside of the attribution issue, today's Notice of Proposed Rulemaking contains no notice of proposed rules. In fact, the word "propose" does not appear in the document. Nor do we reach any tentative conclusions. We simply ask a lot of questions about where things stand, which is typically what we would do in a Notice of Inquiry. While I of course support soliciting comment as we begin this journey, I think the better approach here would have been to ask for input on *where* we intend to go. The public is better served if attention can be focused on proposed rules, and the FCC's ultimate decisions are better informed by direct, as opposed to general, public engagement.

But since this remains a Notice of Proposed Rulemaking and since we may well adopt rules for mobile spectrum holdings around the same time that we adopt rules for the broadcast incentive auction, I want to highlight the linkage between these two proceedings. It is critical that the incentive auction be a success, and that, in turn, requires vigorous participation and competition for spectrum in the forward auction. I am thus skeptical of any steps that would depress participation in the auction, such as tightening the spectrum screen, adopting a hard cap on spectrum holdings, or imposing requirements that would enable the Commission to second-guess how wireless operators run their networks and thus reduce the value of spectrum.<sup>1</sup>

I am particularly concerned about two consequences that would likely result. *First*, constricting the spectrum screen will be bad for public safety. By law, the net revenues of a successful incentive auction must be deposited into the Public Safety Trust Fund. In other words, the more money we raise through that auction, the more money that will become available for the First Responder Network

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<sup>1</sup> See, e.g., Notice of Proposed Rulemaking at ¶¶ 20–21, 39, 46.

Authority, or FirstNet. And given the high costs of rural deployment, raising substantial funds is especially critical if states like Kansas and West Virginia are going to become a part of the nationwide public safety broadband network. On the other hand, artificially depressing demand in the auction will lower net revenues and thus reduce the amount of money received by public safety.

*Second*, narrowing the spectrum screen will aggravate the spectrum crunch. Unlike in normal auctions, there is a direct relationship in an incentive auction between aggregate auction demand and the amount of spectrum that will be made available for mobile broadband: The more demand for spectrum in the auction, the more spectrum that will be sold. On the other hand, a stricter spectrum screen will lower overall auction demand, and thus less spectrum will be made available for mobile broadband.

In conclusion, we have the opportunity to make some real improvements in our spectrum screen. I look forward to reviewing the record that will be developed in the coming months and working through the issues with my colleagues. And I hope that we will make the right decisions. Considering the stakes associated with the incentive auction, we should, at a minimum, do no harm.