

Remarks of FCC Commissioner Kathleen Q. Abernathy
ITA - The Private Wireless Summit 2002
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As prepared for delivery

Thank you, Rick, for the nice introduction. It's always a pleasure to meet with members of the private wireless community, and I appreciate ITA's invitation to be here this morning. ITA does a great job presenting and articulating the concerns of the private wireless community – a job which is often made challenging by your group's diverse membership.

Several months ago, I spoke to LMCC's National Conference. At the time, I discussed what I described as "exciting and turbulent times" for all of those who work with spectrum policy. I think a case can be made that the debate has gotten even more interesting.

Most recently, we decided to tackle spectrum on a far-reaching basis. As most of you know, at the Commission's open meeting yesterday morning, the Spectrum Policy Task Force presented its recommendations in a report to the full Commission. The task force – which was made up of FCC staff engineers, economists, and yes, even attorneys – was asked to step back, think outside of the box, and brainstorm about how we can improve the way we carry out our statutory obligations to manage spectrum. The broad concepts coming out of the task force's deliberations – increasing access, availability and efficiency of the spectrum resource – will help frame the debate as we move forward and initiate the public comment process. This is only a starting point, and it is far too soon for me to know where the Commission is likely to end up. But I appreciate the incredible effort, including the input from many of you, that has gone into giving the Commission a framework for future discussions. Let me assure you that I will keep the interests of the private wireless community in mind as we engage in this debate, and I encourage you all to provide input going forward.

And I thought it might be helpful if I share a couple of thoughts regarding spectrum reform.

First, we must recognize the significance of private wireless operations. Although commercial mobile radio services provide an important service, they are not a substitute for private land mobile operations. I understand that some businesses require communication that is more reliable and durable than commercial operations can provide. There is no doubt that private services are an essential part of public and employee safety and business efficiency. In many ways, private wireless is a backbone of the nation's economy, and for me, there will always be solid public policy reasons for private land mobile spectrum.

Second, site-by-site licensing remains a viable and useful tool in our spectrum management arsenal.

Third, the Commission should move forward with its secondary market proceeding to ensure that spectrum can move to higher valued uses without substantial government intervention and corresponding delay. Band managers – such as Access Spectrum (and I know that Mark Crosby is on a panel later this afternoon) - are an important step forward in that regard. They are an innovative spectrum management tool that capitalizes and initiates the type of secondary market dynamics that we hope to facilitate more broadly in the secondary market proceeding. Secondary markets are essential to allowing parties to acquire spectrum in the shapes and sizes that business needs require.

Lastly, spectral efficiency is a key goal. I understand that the private land mobile bands are some of the most congested and heavily used spectrum. We must continue to develop mechanisms to further encourage efficient use of our existing private land mobile spectrum. We have two ongoing proceedings before us that explore ways to increase spectral efficiency. While both have been pending for some time, we now are actively working on them, and you can expect decisions on both shortly.

One is what we call the BBA proceeding, which addresses proposals regarding the migration of operations to narrowband technology by dates certain. I fully support mechanisms, such as narrowband technologies, that have the potential to make more spectrum available to the public. The second proceeding involves LMCC's consensus for low power frequencies. The benefits of lower power uses are extremely important in our efforts to maximize flexibility of spectrum use, and I'm looking forward to the full adoption of this item. I also want to commend the Wireless Bureau's efforts (and I know Kathleen Ham is here today) on its audit of private land mobile spectrum below 512 MHz. The audit is a very proactive approach to ensuring that this spectrum is actively used, and as a result of the audit, the FCC has recovered more than 33,000 call signs.

I thought it might also be helpful if I talked a little about the 800 MHz proceeding. As all of you know, there are no easy answers. We have a problem at 800 MHz that needs to be fixed – and I applaud the efforts of the affected parties to develop proposals that mitigate, to the greatest possible degree, the public safety interference problems in the band. Whatever plan we adopt must aggressively attack the public safety interference issues. In addition, I am generally skeptical of any proposal that requires the imposition of significant costs on any single group of licensees – particularly licensees that do not cause and are not harmed by the interference. I am also generally reluctant to solve the 800 MHz interference problems by moving parties into a host of other bands – so if possible I would like to find as many of the answers to 800 MHz interference *in the 800 MHz band*. Nonetheless, I recognize that this is a difficult problem that will require creative solutions.

With regard to the ongoing status of this proceeding, much of the debate of late has been focused on the proposal submitted by what is known as the Consensus Plan, of which I know ITA, as an organization, is a member, and I praise the efforts of ITA (and particularly Laura Smith) for bringing this diverse group of licensees together. In addition to the Consensus Plan, we have received more than 400 pleadings in this docket,

and the staff is diligently working through and analyzing the details of a number of different proposals. While many innovative ideas have been put forth in various plans, each “plan” has its own set of challenges. We are also waiting for the proponents of the Consensus Plan to make a supplemental filing to address many of the outstanding issues. Not surprisingly, the more details you can provide, the better the public and the FCC can evaluate the proposal and attempt to move toward a solution. Unfortunately, as a result of this development, it may take us additional time to resolve these issues. At the same time, however, we recognize the importance of solving the interference to public safety. It is one of our highest priorities.

I thought it might also be helpful if I touch on some of the issues I’ve been hearing about in my *ex parte* meetings on this proceeding.

Some parties have questioned the scale and scope of the alleged interference to public safety operations in the 800 MHz band. Our engineers tell me that there are very real problems, but many parties coming in to meet with me also argue that the extent of the interference is less pervasive in certain parts of the band or that only certain types of licensees are causing the interference. So we need to find a way to quantify the extent of the problem.

Border regions are another key issue. I’m told that all of the plans, including the Consensus Plan, are inconsistent with existing agreements with Canada and Mexico. I hope the panelists will discuss how the issues with border areas should be addressed.

I’m also hearing from opponents that rebanding alone may not solve the interference problem. To the extent we find such rebanding necessary, are there complementary technical measures that need to be taken? For example, we sought comment in the initial notice in this proceeding on whether receiver standards could help solve the interference problem.

Of course, another subject of much discussion among parties is the proposal to provide Nextel with spectrum in other bands. I would be very surprised if no one mentioned that subject during the panel discussion.

Last, but not least, is how to fund any of the proposed solutions. I’ve been hearing from a lot of opponents of the Consensus Plan that the plan will impose significant costs in terms of retuning or rebanding. How should the FCC address these concerns?

To be fair, responses to many of these questions may be contained in the Consensus Plan’s anticipated submission— and again, we look forward to reviewing that filing, but I wanted you to know some of the things I’ve been hearing and thinking about. I hope the panel sheds light on some of these difficult questions.

Now I would like to introduce the moderator for the panel session.

Bob Pettit is a partner in Wiley Rein and Fielding, a law firm with more than 200 attorneys and offices in Washington, DC and Northern Virginia. He advises clients on matters involving FCC strategy and policy regarding spectrum allocation and regulatory enforcement and decision-making. Previously, he served as General Counsel of the FCC, Associate Deputy Secretary of Transportation, and before that as senior legal advisor to FCC Commissioner Dawson. He graduated summa cum laude from the University of Missouri. He is a member of the Phi Beta Kappa society, and he has his law degree from Duke University School of Law. I've known Bob for a long time, and I leave you in good hands.

Thank you all again for inviting me to join you this morning, and I look forward to continuing to work with you.