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Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 615 F.2d 388 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE:
January 6, 2000

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FCC Adopts Rules for Licensing and Operations in Portion of 700 MHz Band Reallocated from Television Channels 60 through 69

Washington, DC -- The Federal Communications Commission (FCC) has adopted licensing and service rules governing operation of 30 of the 36 MHz of commercial spectrum located in the 700 MHz band that will be auctioned later this year. According to participants in this proceeding, including numerous advanced wireless service and high technology companies, this spectrum can be used for a variety of wireless services, including fixed and mobile Internet access. Pursuant to Congressional direction to have the proceeds be deposited in the U.S. Treasury by the end of September, the Commission is scheduled to conduct this auction this spring.

To further the Congressional directive that it protect nearby public safety users from interference, the FCC also adopted "guard bands" encompassing 6 MHz of spectrum. Located adjacent to the spectrum allocated for public safety use, this commercial spectrum would be auctioned in two paired segments, one of 4 MHz and one of 2 MHz. Concurrent with release of this Order, the Wireless Telecommunications Bureau will be releasing a Public Notice permitting further brief comment on certain specific technical and operational issues regarding the two guard band licenses. Shortly after receiving comments, the FCC will issue a second Report and Order addressing the specific licensing and service rules for this 6 MHz of spectrum.

In the Balanced Budget Act of 1997, Congress directed the Commission to reallocate spectrum in the 700 MHz band to commercial and public safety services from its previous exclusive use for television broadcasting service on channels 60-69. The Act originally directed that auctions for the 36 MHz of this spectrum that were not allocated to public safety use be conducted after January 1, 2001. Legislation enacted this past November, however, accelerated the auction date by requiring that auction proceeds be deposited in the U.S. Treasury by September 30, 2000.

The item adopted today addresses:

- **Band Plan for 30 MHz:** The FCC established two license bands, one of 20 MHz (two paired 10 MHz bands) and one of 10 MHz (two paired 5 MHz bands) that can be used for a variety of wireless services. These spectrum blocks can potentially be used for advanced wireless services, such as high-speed Internet access and next generation (3G) broadband wireless services, as well as new broadcasting services that meet the applicable technical parameters. The FCC also decided to auction these licenses in six Economic Area Groupings (EAGs) across the country. The FCC is permitting parties interested in acquiring both licenses in an area, to win both in the auction, enabling the potential aggregation of up to 30 MHz of spectrum nationwide. [See attached Diagram]

- Band Plan for 6 MHz "Guard Bands": The FCC established two license bands, one of 4 MHz (two paired 2 MHz bands) and one of 2 MHz (two paired 1 MHz bands). The FCC will determine in a subsequent Report and Order the service rules, including technical, operational, and licensing requirements, for these licenses. The FCC noted that the technical and operational restraints placed on this spectrum will be more stringent than restraints placed on the 30 MHz spectrum to ensure neighboring public safety bands are protected from interference.
- CMRS Spectrum Cap: The FCC stated that 700 MHz licenses will not be subject to the Commercial Mobile Radio Service (CMRS) spectrum cap. The Commission recently affirmed, with some adjustments, the 45 megahertz CMRS spectrum cap, but indicated it would consider in this proceeding whether and how the spectrum cap should apply to the 700MHz licenses. The FCC stated that the spectrum cap for the existing 180 megahertz of CMRS spectrum provides a sufficient safeguard against excessive consolidation of CMRS spectrum, and that refraining from extending the cap to the 30 MHz would enable existing CMRS providers to use this spectrum for the provision of advanced services. The encumbered nature of the spectrum at this time also favors excluding this spectrum from the CMRS spectrum cap.
- Eligibility Restrictions: The FCC did not impose any eligibility restrictions, such as restrictions on existing service providers like incumbent local exchange carriers or cable operators.
- Interference Protection: The FCC adopted standards to assure protection of the approximately 100 existing conventional television stations that are permitted to continue to operate on these bands during the transition to digital television (DTV), and to safeguard public safety operations on adjacent bands.

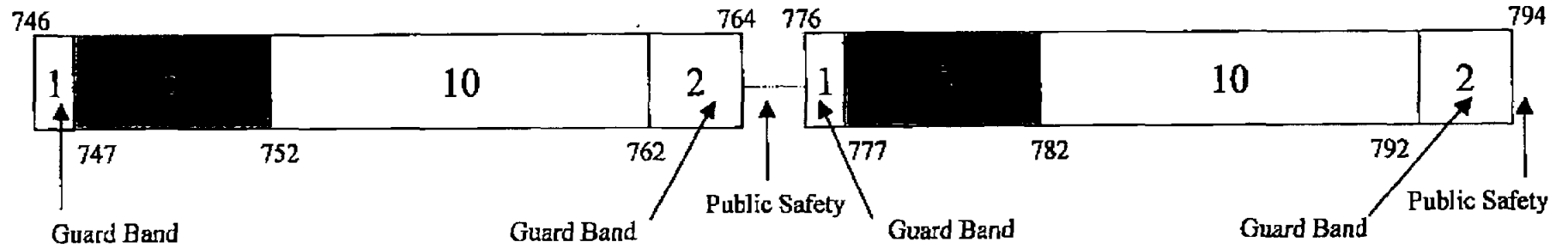
Today's action represents the FCC's first decision guided by the principles enunciated in its recent *Spectrum Reallocation Policy Statement*. Based on those principles, the comments of interested parties, and FCC review of technical issues, the FCC found that a flexible, market-based approach is the most appropriate method for determining service rules in this band. The FCC also concluded that in these spectrum bands, the establishment of sub-bands will best ensure that a variety of spectrum management priorities are realized, including protection of public safety operations from interference. Rapidly expanding demand for wireless voice and data services, as well as projections of the increased spectrum necessary to support broadband applications to be implemented with next generation technologies, confirm that these bands should be structured to enable their efficient and intensive use for these and future spectrum-based services and technologies.

Action by the Commission on January 6, 2000 by Report and Order (FCC 00-5). Chairman Kennard, Commissioners Ness, Powell and Tristani with Commissioner Furchtgott-Roth approving in part and dissenting in part, and Commissioners Ness and Furchtgott-Roth issuing separate statements.

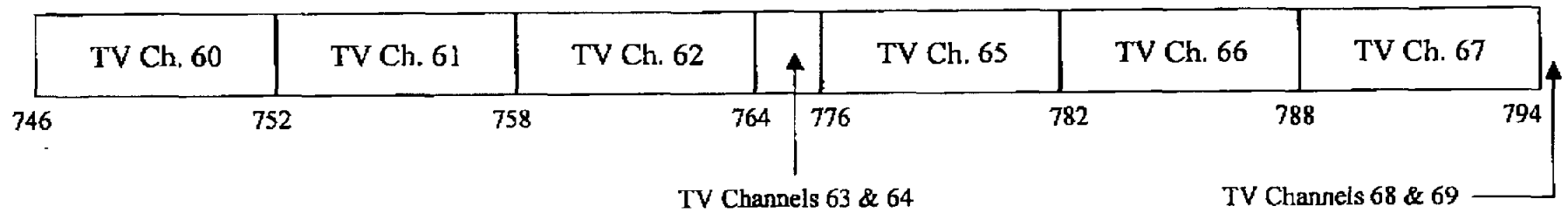
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WT Docket No. 99 -168

700 MHz Band Plan



TV Channelization





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Press Statement of FCC Chairman William E. Kennard
On Report and Order Establishing Licensing and
Service Rules for 700 MHz Spectrum
January 6, 2000

This Order establishes an exciting framework for wireless in the 21st century. Our rules allow auction winners to take advantage of technological advancements in providing a wide variety of new wireless services -- from the next generation of mobile services to new fixed broadband services that could become the third Internet pipe into homes across America. This can only mean great things for consumers.

- FCC -

**SEPARATE STATEMENT OF
COMMISSIONER SUSAN NESS**

Re: 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

I strongly support our action today, unleashing 30 MHz of prime spectrum for a variety of wireless services, including fixed and mobile Internet access. I am excited about the prospect of wireless alternatives to the local loop and/or Internet connections to mobile devices – as determined by a robust marketplace. Our decision best balances the needs of these competing demands for the same spectrum.

Our decision also recognizes the paramount importance of shielding the public safety bands from interference. Our further actions on the guard bands established in this order first and foremost should ensure the protection of public safety communications.

While I support the order, I would have preferred to act concurrently on the licensing and service rules for the 6 MHz of guard bands. These guard bands, which are adjacent to the public safety spectrum, also are adjacent to the spectrum allocated today. The licensing and service rules that will apply to the guard bands also may affect business strategies of those planning to bid on the 30 MHz. Potential bidders therefore should have the opportunity to factor into their business plans the rules governing the guard bands when considering participation in the auctions governing this newly available spectrum.

Despite my regret that we have not acted concurrently on the full 36 MHz of spectrum, I do look forward to the expeditious resolution of the subsequent actions the Commission will take on these new commercial allocations. I await with anticipation the new advanced wireless services that will be provided to consumers as a result of our action today, and to the competition that will result in the marketplace from the initiation of these new services.



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FOR IMMEDIATE RELEASE:
January 6, 2000

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH Approving in Part, Dissenting in Part

Re: 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

Washington, DC -- As an initial matter, I wish to applaud the Wireless Bureau and the Office of Engineering and Technology for their tireless work in producing this item. Recent legislation greatly expedited our consideration of these issues. The Bureau and OET have made every effort to give full and fair consideration to the positions of all of the parties in order to reach the best policy results. By and large, I believe they have succeeded in crafting flexible and technology-neutral rules that will facilitate the prompt availability of significant spectrum for the highest valued uses.

The Order's approach to the primary spectrum blocks warrants particular praise. As the communications marketplace becomes increasingly competitive and dynamic, the Commission will be challenged to craft rules that allow for maximum flexibility in utilizing spectrum. This proceeding presented such a challenge. The sizing of spectrum blocks, the geographic licensing units, the aggregation and disaggregation rules, and the auction approach all have implications for the types of service providers that will succeed in the auction. Our task to balance the competing interests for the size and width of spectrum blocks has not been easy, but I believe we have done our best to preserve as many service and technology options as practicable in designing our rules for the primary spectrum blocks.

I must, however, part company with my colleagues on the item's approach to our statutory obligation to craft rules which protect public safety licensees from harmful interference. Rather than creation of so-called "guard bands," I would have been inclined to resolve our mandate by establishing strict interference limits with significant penalties for noncompliance. This approach is consistent with our statutory charge to "establish interference limits at the boundaries of the spectrum block and service areas."¹ I believe such a system would have appropriately left it to the marketplace to

¹ 47 U.S.C. § 337 (d)(1).

determine the appropriate uses of the spectrum and left to us the obligation to enforce rules that protect public safety licensees from interference. This approach would also have taken the Commission out of the difficult role of assessing the appropriate size and use of the guard bands. Nonetheless, there may well be some utility to the guard band concept as a basis for establishing boundaries and thresholds for interference. The creation of such bands alone may not have warranted a dissent.

However, even assuming "guard bands" are a necessary and appropriate convention, I am not convinced that a full 6 MHz is necessary to protect public safety. Indeed, it appears that 4 MHz or less would have provided a sufficient guard band to protect public safety licensees. Some parties have suggested that 6 MHz is necessary based on some other factors - such as the need for additional private spectrum or the need to create a viable market for "guard band spectrum." It may indeed be true that private users need additional spectrum or that 6 MHz is necessary to create a thriving market in guard band spectrum - but I find neither of these priorities in the statute. Nor do I believe these goals necessarily further the statute's purpose. Thus, to the extent I acquiesce the creation of guard bands at all, I would do so based only on an interference rationale and allocate only 4 MHz for such bands.

Today's item stops there. It only establishes the size of the guard bands. However, I feel compelled to express some concerns about some proposals that have gained currency in recent months about potential restrictions on the use of the guard bands. These items will be resolved in our Second Report and Order, but I wish to take this opportunity to state clearly my view of these pending issues.

I believe these guard bands should be open to all bidders willing to accept our interference limits on these bands. Although I believe the band manager concept is an innovative and potentially useful spectrum management tool, I cannot support proposals that would limit eligibility to a particular type of licensee. It seems to me the Commission should not be dictating business models to our licensees. In essence this limitation would say, if you want this spectrum, here is what your company needs to look like. I see no basis for such a proposed limitation. In addition, there may be many licensees who can use the guard bands for higher valued purposes than the band manager concept will allow. If a licensee can protect public safety, win the auction, and offer wireless Internet access to underserved areas, who are we to stop that higher-valued use based on some interest in testing a spectrum management tool?

In addition, the statute specifically requires that this spectrum be put to "commercial use." Whether band managers even qualify as a "commercial use" has been the subject of substantial debate. These doubts are only magnified by proposals to limit eligibility to "band managers" and preclude traditional "commercial" licensees who are prepared to comply with our interference limits.

I am also unconvinced by those who argue that we must limit guard band auction eligibility in order to "test" the band manager concept. In my view, the

concept can be tested when band managers compete against other licensees in an open auction. You cannot truly test the concept by fixing the result, so that only band managers can win. Moreover, we should not in good conscience adopt any proposals that eliminate an opportunity for legitimate commercial entities to compete for spectrum simply because they fail to meet newly-minted criteria for a new non-statutory licensee, the band manager.

There are other questions that remain about these band manager proposals. First, it is not clear how a band manager is different from any other licensee that can lease its spectrum to other users. Second, how would a band manager fit into our traditional common carrier jurisprudence? What impact does that classification have on universal service? Although these regulatory issues may well be resolved, the band manager proposals create lingering doubts in my mind about the desirability of restricting eligibility to this class of new licensees.

My concerns about the various guard band proposals being considered in the Second Report and Order should not overshadow the overall strength of this item as an effort to permit market forces to determine the most-highly valued use of this spectrum. American business and consumers stand to gain significant benefits from this flexible, technology-neutral approach.