STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Approving in part, dissenting in Part
December 15, 2004

RE: Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services (WT Docket No. 03-103); Biennial Regulatory Review-Amendment of Parts 1, 22, and 90 of the Commission's Rules; Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service Mutually Exclusive Applications; and Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804 (Report and Order); Amendment of the Commission's Rules to Facilitate the Use of Cellular Telephones and other Wireless Devices Aboard Airborne Aircraft (NPRM).

There is good and bad in today's *Air-to-Ground Order*. On the one hand, our actions have the potential to give airlines and passengers new communications technologies. The current air-to-ground narrowband service surely has not fulfilled expectations. There are few calls made each day and the service is high-priced and limited to voice. A new broadband air-to-ground service could allow a far greater diversity of services, including the ability to check email, access the Web, enhance avionic support, and improve homeland security communications.

On the other hand, the way the FCC has decided to launch this new service risks creating a monopoly for broadband air-to-ground services. The Order creates an auction where one company can lock up the only license that can support a true broadband air-to-ground service. That means that if a company bids enough, it can exclude all other competitors, leaving airlines with only one possible supplier and passengers with no choice. Experience shows that if a company has the chance to buy a monopoly license, it will pay a premium for it. That is because it allows them, with one fell swoop, to ensure that competitors will not be able to keep prices down or force them to innovate.

That result might be a feast for the monopolist, but it's famine for consumers. Airlines will have to do business with the monopolist at any price. That is why so many airlines stated on the record that we should ensure competition. It also means that when passengers want to access the Internet using a broadband service they will have to pay what the monopolist charges or have no broadband service at all on the airplane. It also means that when the Department of Homeland Security wants broadband service for Air Marshals, there will be no chance for a competitive bidding process, because only one company can offer the service. This could lead to taxpayers paying far more for this DHS no-competition contract than necessary. Historically, the risks of creating a monopoly led the Commission to create multiple licenses when it started the cellular service, PCS, satellite TV, satellite radio and in every other auction initiating a new service that I can think of. But we don't do so here.

While I am pleased that we include the chance for competing companies to use the auction to win two overlapping three MHz licenses in the Order, history doesn't indicate this will provide the competition consumers want. Some of my colleagues argue this provides the potential for competition. But I fear that this possibility is unlikely to be realized. There is substantial record evidence that two companies bidding for overlapping three MHz licenses will find it exceedingly difficult to defeat a company bidding on a monopoly license, whether that license is for 4 MHz or for 3 MHz. The potential monopolist has far more to gain and will pay a significant premium to eliminate competition. My colleagues also point to the fact that if a company buys the exclusive 3 MHz license, a second company will be able to compete with them using the remaining 1 MHz license. But this remainder license seems unlikely to provide real competition. The 1 MHz licensee will have 1/3 the spectrum resources and the service it offers will likely have only 1/4 of the throughput. The 1 MHz licensee may be able to offer voice, but it will not be a real broadband competitor. Likewise, even the Order itself concludes that satellite services, while useful and important, are not similar enough to terrestrial air-to-ground services to provide adequate competition. So the unwieldy combinatorial auction, the orphaned 1 MHz narrowband licensee, and the dissimilar satellite service are all unlikely to protect consumers. I therefore must dissent to the decision not to ensure two competitive licenses in this Order.

We also consider the airborne cellular NPRM today. In it we ask for comment on whether we should relax the rules that prohibit using mobile phones on airplanes. There is good and bad in this NPRM as well. On one hand, I am glad that we are exploring whether technology has evolved so that the technical limitations that led us to establish this interference rule are no longer necessary. On the other side of the scale, many airline passengers don't relish the idea of sitting next to someone yelling into their cell phones for an entire six hour flight. I know I don't! So I hope that consumers as well as companies will participate fully in this NPRM and let us know what they think. Meanwhile, we here at the Commission need to determine precisely what jurisdiction the FCC has over the annoying-seatmate issue. If we are limited to an exploration of the interference environment, we must ensure that some authority, maybe the airline, is empowered to control the problem.

Thanks to WTB and OET for their hard and good work.