

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS
Approving in Part, Dissenting in Part

Re: In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; IB Docket No. 01-185, IB Docket No. 02-364 (Adopted January 29, 2003)

I agree with today's decision to grant MSS licensees the authority to provide ancillary terrestrial service for their customers. The MSS industry is in its infancy. But it has great promise -- great promise to improve rural service, to enhance national security, and to strengthen the overall satellite infrastructure. It is with hope that ATC will further efforts to turn this promise into reality that I approve of the majority of today's order.

But it is also with the intention of maintaining the promise of the 2 GHz band, L-band, and big-LEO band that I support the strict gating requirements we insist on before ATC authority may be exercised. Satellite licensees must protect the vitality of satellite services in order to win ATC rights. This means operating their own satellite facilities, meeting tough construction and deployment milestones, providing "substantial satellite service," providing satellite-capable phones at point of sale, and either complying with the dual-mode-phone safe harbor or successfully demonstrating that another arrangement protects satellite service.

I must dissent on one point, however. The majority rejects the proposal contained in the NPRM to charge licensees fees for the additional spectrum usage rights we grant in this order. MSS licensees did not pay for their spectrum licenses at auction, since this is prohibited by Congress. This means that the public has not been compensated for this private use of public spectrum. Additionally, licensees who have not internalized the cost of purchasing spectrum licenses do not have the same incentive to use spectrum resources intensively. Charging MSS licensees a usage fee could mitigate these problems.

Questions about the fee's structure and FCC authority remain, even after the record on this proposal was received in response to the NPRM. I therefore would have made a tentative conclusion to impose such fees and would have initiated a second NRPM more specifically asking how to create a fee system, what authority the FCC has, and how fee amounts should be set. Doing so would have begun the process of insuring that the American people are adequately compensated for private use of a public resource, and that all spectrum users have the incentive to use spectrum intensively. While some in the majority believe this is "unproductive," I believe that working to find ways to promote the efficient use of spectrum and to compensate the public for the use of a public resource is our responsibility.