

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND CONCURRING IN PART**

Re: *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Report and Order, GN Docket No. 13-185

Today, we take another step to implement the "Spectrum Act" contained in the Middle Class Tax Relief and Job Creation Act of 2012 by making available to the commercial marketplace an additional 65 megahertz of much needed spectrum. These frequencies will be used to deliver high-speed mobile broadband and other wireless services that Americans demand.

The staff of the Wireless Telecommunications Bureau and Office of Engineering Technology did yeoman's work to get us to today's order and they deserve our highest gratitude. The Spectrum Act's upcoming February 2015 deadline put the Commission on a very tight timeline, especially given the fact that two bands identified for auction currently host important federal operations that need to be relocated. I am especially pleased that this order will enable us to auction 1755-1780 MHz paired with 2155-2180 MHz. These bands are not only ideal for wireless broadband, they are also globally harmonized, which means consumers stand to benefit as U.S. providers take advantage of the economies of scale in network equipment and overseas roaming. In the same vein, I would have preferred that we auction the uplink 1695-1710 MHz paired with a downlink band and, if necessary, had gone back to Congress to ask for a limited delay to achieve this, potentially generating more value for both the industry and auction proceeds.

While I am pleased that we have reached resolution on the major decisions that will enable us to move forward with an auction, I am concerned about the remaining issues that still need to be resolved. First, talks with NTIA will continue about the specifics of the transition plans and the technical parameters surrounding the temporary and permanent sharing zones that will be employed to protect legacy federal users. To ensure that Americans can realize the most benefit from this spectrum, the FCC and NTIA should continue to decrease the number and the size of the areas where AWS-3 licensees must coordinate during the relocation process and beyond.

Second, the Spectrum Act states Congress's strong preference for clearing over spectrum sharing. In fact, sharing is only allowed after NTIA determines, in consultation with the Director of the Office of Management and Budget, that relocation of federal operations from a band "is not feasible." And, even then, it must notify the relevant Congressional Committees with a written explanation of the specific technical or cost constraints that make clearing impracticable. I am very concerned that this has not yet happened. I hope that NTIA complies with the statute and provides Congress with an explanation for why federal users cannot ultimately vacate these bands.

Third, I am concerned about some of the remaining details surrounding the auction itself. The law states that, in order for the AWS-3 auction to be successful, it will have to generate enough revenue to cover 110 percent of the relocation costs. For these funds to be raised, auction participants need certainty in order to have the confidence to bid freely. Leading up to the auction, the FCC will have to keep the public informed about the factors that will affect providers' decision making, including reserve prices. In order to formulate business plans and bidding strategies, bidders will need to know the geographic scope and estimated time frame for relocating federal users. Most importantly, they will need to know how the spectrum screen will apply to this auction. The item defers this question to the mobile spectrum holdings proceeding. But, as I have said before, I will strongly oppose arbitrary spectrum caps or any spectrum screen that is not directly related to addressing undue power in a particular market. We

simply cannot afford the risk of using that proceeding to give favored industry players an unwarranted discount on spectrum.

There are also a few aspects of the order upon which I must concur. First, I believe that the appointed and confirmed Commissioners should decide issues of importance before the Commission. But in response to concerns about the number of decisions that were delegated to the bureau-level, the final item no longer contains any reference to delegated authority and leaves those decisions to be made at a future date. Having just gone through a number of instances when I requested to vote on an item, only to have it go out on delegated authority anyway, I remain skeptical that I will have the opportunity to vote on the upcoming decisions regarding AWS-3. Excessive reliance on delegation demeans the creditability of the Commission.

In addition, I am opposed to the item's discussion of extending interoperability to the AWS-4 band. Without adopting rules, the Commission here is telling industry that, absent technical impediments, we expect them to implement interoperability. If they do not, or "if the Commission determines that progress on interoperability has stalled in the standards process," the Commission may regulate. This is nothing more than stealth regulation. It just avoids the notice problems.

Again, I thank the dedicated staff in the Wireless Telecommunications Bureau and the Office of Engineering and Technology who made great strides in their negotiations with NTIA, and the other affected federal agencies, to get us here today.