

**Remarks of Commissioner Michael O’Rielly  
Before the New York State Broadcasters Association Summer Conference  
June 23, 2015**

Thank you very much, David, for that kind introduction, and thank you all for your very warm welcome on this hot summer day. Your conference theme for 2015 is “Confronting Change,” a most timely topic as changes are impacting the broadcast industry from just about every angle imaginable at a very rapid pace. But I must say that from the Washington, DC perspective, no state broadcasting association is better equipped to respond to all the changes that so often seem to emanate from our Capital City. NYSBA members and leadership all maintain a very active presence in DC. And your efforts to bring problems to the attention of federal legislators and regulators often achieve solid, lasting results. It is a great honor to be invited to join you here at the epicenter of the broadcasting world, and a privilege to have this opportunity to meet and talk with some of you who have not yet made the trip down to DC. I promise it is not as bad as you think, and bears very little resemblance to what you may have seen on *House of Cards*, so be sure to stop by and say hello to a fellow New Yorker, albeit one from Western New York, if you ever decide to venture south.

In so many ways, it was in New York that broadcasting was born, from the first public radio broadcast over a century ago, live from the stage of the Metropolitan Opera House, to the world’s oldest television station, broadcasting since 1928 in Schenectady. New York broadcasters have been leaders and innovators in the field ever since. The first commercial TV licenses ever granted by a brand-new FCC were issued to NBC and CBS stations in New York in 1941, and the first official paid TV advertisement happened that same year with an announcement for Bulova watches during the Brooklyn Dodgers game on WNBT, now WNBC. It is reported that Bulova paid somewhere between \$4.00 and \$9.00 for the one-minute ad, and as with so many other things in your industry, this has changed quite a bit! Decades later, New York was one of the early digital television pioneers, with ATSC facilities installed atop the World Trade Center as early as 1998. And New York broadcasters continue to evolve and expand the definition and reach of broadcasting with compelling content online and over-the-top. I’m sure you already knew these facts, but I am not sure you believed that I did.

**Time to Eradicate Pirate Radio Stations**

To see the impact of New York broadcasters in Washington, you don’t need to look any further than the letter to the FCC on the ongoing problem of pirate radio, which every single member of the New York House delegation signed just two weeks ago. Getting all those signatures on one document is quite an impressive feat and speaks not only of your high level of engagement and involvement with your representatives, but also of the extremely serious nature of this problem, which I addressed in a post on my FCC blog two months ago. Far from being cute, insignificant, or even somehow useful in the broadcasting ecosystem, pirate radio represents a criminal attack on the integrity of our airwaves, at a time when spectrum has become more scarce and precious than ever before.

Burdened with around 25% of the nation’s total pirate transmissions, New York’s airwaves are a target under continuous assault. As the Congressional letter highlighted, there appear to be 34 pirate

stations operating in Brooklyn and the Bronx alone, with more stations now spreading throughout the state like poison ivy in a neglected garden. And where is the gardener? With enforcement actions on the decline even as unauthorized stations proliferate, many feel that pirate radio has slipped far down the FCC's priority list.

Allocating spectrum and subsequently protecting license holders from interference is one of the Commission's original charter missions and remains our most fundamental responsibility. Without vigilant, proactive enforcement of every license, the value of our spectrum, one of the most treasured natural resources of the modern age, is irreparably degraded. And when the interference affects legitimate, licensed broadcasters, Americans can be deprived of the vital and potentially life-saving emergency alerts, weather updates, and news they need at critical moments. There can be no justification for the Commission continuing to look the other way with everything that is at stake here, and that is why I have called for a renewed focus on pirate radio enforcement along with consideration of potential private remedies to give licensees more tools to defend against interference.

In addition, one idea that is worth exploring that I discussed with David is whether to put building owners on the hot seat for hosting pirate radio stations. Most building owners wouldn't allow tenants to conduct an illegal gambling sites, sweatshops or drug activities, why should they be allowed to be so passive with regards to illegal pirate radio stations? Shouldn't there be an added burden to make sure building owners don't knowingly lease or rent to pirates? I don't want to go overboard because I strongly believe in property rights, but it seems like accepting a complete ignorance excuse is insufficient. Such an idea may require a change in law, and therefore subject to Congress, but if it is something that may help the cause, I'm willing to assist you in that effort.

The good news is that more help is on the way from the FCC. Thanks to all the recent efforts to raise awareness of this problem, the Chairman has finally seen the light and committed to step up enforcement against pirate radio operators in connection with the Commission's initiative to reorganize the operations of FCC field offices. My understanding is that the NY FCC Field Office is quite responsive and capable. Our job at FCC Headquarters is to make clear to them that we place a high priority on their efforts to eliminate pirate radio, are ready to provide resources, and expect results in the near term. Next week, the FCC will be hosting several New York broadcasters, as well as your counterparts from other markets, for a discussion to start formulating a plan of attack. So I am optimistic about the chances of rapid, substantial progress on the enforcement front. I know that no one is happier to hear this news than the community gathered in this room, and I commit to keeping the pressure up to eradicate pirate radio for good.

### **Broadcast Spectrum Incentive Auction**

When you look through the history of the broadcast industry and its relationship with the federal government, a common theme emerges of broadcasters being asked to do more with less... and are continually rising to the challenge. Perhaps you will permit me another short detour through the broadcasting archives here. One of the major technical issues in deploying color broadcasting in the 1950s was the conservation of spectrum and bandwidth, as the color signals needed potentially three

times what was necessary for the existing black-and-white standard. But working with NTSC, broadcasters developed an ingenious standard for a high-resolution, low-bandwidth color signal that even was backward-compatible with all the existing black-and-white TV sets in American homes, more than a decade before there was any standard for color broadcasting in Europe. The NTSC color standard was a major engineering achievement that was ultimately widely adopted by other nations throughout the Americas and Asia and remained dominant for almost 60 years.

This is one of many classic American stories of the early and rapid spread of new technological innovations and the benefits they bring, which has repeatedly been made possible by the ingenuity and the can-do spirit of American industry. Broadcasters have always been some of the best representatives of this attitude, and so it should be no surprise to anyone that you have approached the upcoming incentive auction – another request for your industry to do more with less – from a fundamentally optimistic perspective. I would like to personally thank the broadcasting community for continuing to engage with us on this complex undertaking, even when decisions have not been going your way, despite my efforts. As we enter a busy and item-filled summer, it is now time to figure out if all of the moving parts of the incentive auction fit together, and how they fit together.

Many of the pieces, such as the reverse auction and repacking, directly affect your industry, but I respectfully suggest that you not ignore the forward auction and wireless issues in your advocacy. These decisions have the potential to impact your industry – and potentially your individual stations – more than you may think, regardless of whether you opt to continue serving your communities or chose to leave the market. Although there have been some press articles and leaks about what the Commission may or may not do, remain vigilant. Bad ideas have been known to rise from the dead.

As we go forward, the variability of band plans and impairments must be limited to the greatest extent possible. Although some variability is inevitable due to border issues, we need to create as close to a nationwide band plan as possible. This is the best way to reduce opportunities for inter-service interference and to avoid conflicts between the broadcast and wireless industries. The Commission, however, has indicated that it is willing to accept an impairment rate of up to 20 percent (by weighted population), a proposal that has been vehemently rejected by both the broadcast and wireless industries. Recently, staff released a public notice introducing a metric that would result in ten to 14 percent (by weighted population) impairment rates, depending upon the clearing target. This represents an improvement, but it is still far from ideal.

It is alarming enough that the Commission may accept such variability in band plans, but it is this flexibility that the Commission is attempting to preserve in order to consider questionable policies, such as dynamic reserve pricing. This flawed idea would permit additional and unnecessary impairments in order to reduce the amount broadcasters could receive for their stations. And, ultimately, the acceptance of impairments determines whether and how many broadcasters could be repacked in the wireless band. This includes the prospect that broadcasters could be placed in the duplex gap, a proposal that appears to be universally hated by broadcasters and the wireless industry, and one that I do not support.

I will also object to any action that allows secondary users to trump the rights of primary, full-power television stations in the TV band. Last week, the Commission sought comment on preserving six megahertz of “white space” in the TV band for unlicensed and wireless mics. If the Commission were to proceed down this path, the ability of full-power broadcast stations to make modifications or seek new allotments, after the repacking process, could be limited, endangering the future of the broadcast industry. I find it ludicrous that the Commission would even consider this, not to mention that it is inconsistent with the Spectrum Act and encompassing Communications Act.

Although I was not able to change the Vacant Channel Notice to conclude that full-power stations would always remain primary in their own band, I did successfully get questions added regarding what should happen if a station determines after 39 months that a modification is needed because of the repacking process. I recognize the concerns and challenges faced by stations – and an industry – that will be provided 39 months to repack. Although the Commission plans on optimizing the auction to minimize the number of station moves and repacking costs, it is inevitable that a number of stations will have to relocate. I have been told on several occasions that the number of crews that work on tall towers may be limited. If this skilled workforce is insufficient for the number of required jobs, work orders may get backed up. This may cause problems with meeting the 39-month repacking deadline. I hope to hear from you about these challenges and what should be done if 39 months proves to be an unrealistic timeframe.

I will also continue to advocate against any decisions that could reduce auction revenues and, therefore, the funding available to compensate broadcasters for their stations. I will remain steadfast against the idea of reserving licenses for participants with lower sub-1 GHz holdings. And, I certainly would not be able to support any decision that would increase the number of reserved licenses. Similarly, I will continue to oppose the proposal that licenses with fewer impairments will be offered as reserved licenses, while licenses with greater impairments will be offered as unreserved licenses. By either excluding the largest wireless providers from acquiring certain licenses or offering them subpar spectrum, it is inevitable that this will affect their participation level and auction revenues will decrease.

Generally, I will continue to champion that broadcasters be treated fairly, that the process be as simple as possible so there is comfort in making crucial business decisions, and that burdens on all industries are minimized. To end on a positive note, Commissioner Pai and I were recently successful in reducing the consumer education burdens on stations that will be repacked. To provide more clarity, we want a fulsome education process but it must be sufficiently flexible. In other words, it must fully inform consumers while ensuring broadcasters are not forced to deal with a one-sized-fits-all approach. Each television market is a bit different than all of the others and broadcasters are in the best position to meet the needs of their viewers. Moreover, we know it’s in your economic interest to do so!

## **Conclusion**

So, thank you for allowing me to take a few minutes of your day. I hope you know that in me you will find someone that is willing to hear every argument, listen to every concern, and act on those that are appropriate. We may not always agree on every subject but it won’t be for a lack of trying.