

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112*

I do not undertake changing the terms or requirements for existing licenses lightly. Commission licensees rely on our rules to formulate auction strategies and in making business decisions regarding capital-intensive network builds. The stability of our successful auction policies and licensing paradigm, including renewal expectancy and buildout requirements, have allowed our wireless providers – big and small – the needed certainty to invest, construct, innovate, upgrade and expand their offerings, and generally focus on providing the best service to their consumers. In fact, I have argued as much with many of our international colleagues who occasionally seek to reactivate licenses, modify buildout policies or change course to meet conflicting policy goals. Such actions are usually at cross purposes to producing the environment needed to actually get networks built.

Occasionally, however, there is a need to modify flawed or outdated rules. This is one of those times. I can support today's order because not only does it harmonize rules for spectrum bands offering similar services, but, more importantly, it provides certainty that did not exist under our previous rules. For instance, comparative hearings will finally and officially be a thing of the past, and there will no longer be a debate about what exactly does the Commission mean by "substantial service." Instead, these are replaced with safe harbors. Generally, an entity that operates consistent with its last buildout requirement, and can certify compliance with certain other rules, will be renewed.

If, for some reason, an entity can't make such a certification, they can submit a detailed showing supporting renewal. While I am not a fan of the case-by-case determinations that the in-depth renewal showing entails, most entities should be covered by the safe harbor. In fact, over the last two weeks, a few concerns were raised by industry participants that the safe harbor was written in such a way that entities would be unable to use it. The item we vote today incorporates edits that should resolve these, and other, issues. Hopefully, we struck the right balance.

Regarding the further notice, I agree with the underlying goals it is trying to achieve. I have been a staunch supporter of strictly enforcing our buildout requirements and reconsidering our construction benchmarks going forward. Therefore, I am supportive of seeking comment on strengthening construction requirements for new licenses or providing current licensees with voluntary options, such as increasing their coverage areas in exchange for longer license terms. These ideas are now teed up in the notice, and I thank the Chairman for accepting my suggested edits. For this reason, I can vote to approve the further notice.

However, I do want to raise serious concerns about possibly increasing the buildout requirements for existing licenses, which I am unlikely to support such efforts if they move forward. Licensees made decisions based on the rules at the time and bid accordingly. To consider altering these requirements for licensees is beyond bad faith. We certainly wouldn't have generated the auction bids or revenues we did had participants been on notice, in advance of the auction, that we can alter the terms and conditions, and we risk our sound auction policy, not to mention years of litigation, in the process.

Moreover, I also must ask how this fits in with our universal service fund efforts, such as Mobility Fund. Basically, are we forcing licensees to absorb the costs of serving additional areas that we previously have found in need of subsidization. Further, are we going to fund buildout and operations in areas where we are going to require licensees to serve? Are we going to force companies receiving

subsidies to absorb the costs of expanding service to adjacent or additional areas where there is little business case for doing so? These and other questions need to be answered before ever going down this route.

Furthermore, I am concerned about the precedent we are setting. If we can change licensees' buildout requirements, what other modifications can be made to meet the various policy goals of the day. Can a future Commission randomly add behavioral conditions like we do in the merger context, can we force sharing or leasing, or can we decide that a current licensee just holds too much spectrum in a market and force them to divest or take it back? Now I know this isn't the intention of my colleagues, but this slope seems to be mighty slippery and that is a risk I will just not be willing to take.