

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258; *Petitions for Rulemaking Regarding the Citizens Broadband Radio Service*, RM-11788 (Terminated), RM-11789 (Terminated)

I am pleased to support today's notice that formally initiates a review of the priority access license, or PAL, rules for the 3.5 GHz Band. When the Commission first considered the rules implementing the three-tiered structure of protected incumbents, PALs, and general authorized access (GAA), it was readily apparent that the PALs structure was seriously flawed. In fact, I likened it to a three-legged stool with a broken leg. Therefore, I am looking to fix the previous Commission's missteps.

From the beginning, I have expressed concerns, as have many stakeholders, that the short license terms and lack of renewability would hamper investment in the PALs. The record in response to the petitions received shows that many entities looking at larger scale deployments require certainty that their investment will not be stranded. And, the Commission's short-sighted decision to potentially limit the number of PALs available at auction heightened these concerns. If an entity seeks the priority and protection PALs offer, then they should be able to obtain this spectrum, even if they are the only entity interested in a market. So, today the Commission proposes to reverse these poor decisions.

The Commission is also seeking comment on increasing the size of the PAL geographic areas. I would like to address some misinformation that seems to surround this proceeding. Regardless of the outrage and hyperbole found in some ex parte letters and press articles, the item does not tentatively conclude that PALs will be auctioned exclusively by Partial Economic Areas. Instead, we are seeking comment on a myriad of options. I am personally supportive of increasing the market sizes from census tracts, which will reduce auction complexity, administrative burdens, and interference concerns. But, I recognize that there are many different views, so I look forward to hearing from all interested parties on this issue. Here is an issue where good, old fashioned cooperation and negotiation occurred with my friend from South Carolina. While I would have preferred we keep the NPRM's proposed text, our staffs worked together to find and agree to language on an acceptable compromise that most parties can live with.

Generally, the role of the Commission in executing spectrum policy is to ensure that investment and innovation is promoted, that flexible use is permitted, and that the spectrum is attractive to as many users as possible. If the Commission succeeds in this task, the marketplace – through our auctions process – will determine the best use for this spectrum. Today's NPRM puts us on this path.

While investment in the PALs has always been a concern, it has been amplified because of the emergence of this band as a focal point for future 5G networks. Internationally, many countries are looking to the 3.5 GHz band for next-generation services that will be fully licensed. If we were to go back in time, I may have preferred that approach, but I recognize the work and investment that has gone into GAA and the databases. In fact, today's item preserves GAA and does not seek any modifications to those rules.

Opponents have stated that the proposed changes are intended to turn this into a 5G-only band for large nationwide providers. That is ridiculous. The Commission implements flexible use policies, meaning a winner at auction can deploy whatever service or innovation they choose. The Commission does not and should not make any decisions regarding what can or cannot be deployed in a band, beyond setting technical rules to prevent harmful interference to incumbents and adjacent users. I fervently believe that this spectrum should be available for all purposes, and, yes, that includes 5G. What the

Commission won't do here is adopt artificial restrictions through license and auction structure to dissuade some uses or users while promoting others. Such preferences are not in the public interest.

In this same vein, I was alarmed that some are under the impression that these licenses were promised to rural providers and other potential users, in part because of a sentiment that big providers warehouse spectrum in smaller markets. Both concepts are wrong. First, the Commission should never promise or provide handouts to any class of entities that may be favored at the time. I don't know if it was actually that explicit or not, but it is a categorical mistake to have allowed the perception that it was the case. Second, while I don't believe licensees are warehousing spectrum, to the extent that we need to fix wireless licenses to ensure broadband buildout in rural markets, the solution is stricter construction obligations going forward and facilitating the partition of licenses.

I have also heard that the proposed changes are just relics of policies past. I disagree again. We have wireless networks that are the envy of the world because of our tried and true auction procedures and rules that promote investment. Travel internationally, as I do, and you will get repeated questions about how other countries can duplicate the FCC's auction rules. These are the very things, including renewability and longer license terms, that has made the U.S. the leader in wireless technologies.

Some opponents say these changes are not necessary, citing the work and investment that has already occurred under the current rules. However, many of the entities that have invested in the research and development stage of this band are the same ones seeking rule changes or would benefit from having PAL certainty. Similarly, many of these entities are also interested in GAA, so they were going to be active in the process to create the databases, standards, and equipment. However, for large scale investments in PALs, they expressed that changes would have to be made.

Other opponents have argued that the Commission should not review these rules at all. They seem to argue that, once the rules are set, there can be no further modifications. The Commission, however, often repurposes spectrum and changes licensing and technical rules, when necessary. While the Commission doesn't take such changes lightly, we are still in the initial stages of this band's deployment. If tweaks need to be made, this is the ideal time to do it. It is better than going through years of proceedings after the fact, like in WCS.

I have also heard that our action today will delay putting this spectrum to use. Again, ridiculous. Equipment is being developed, trials are being conducted, and work on the databases continue. This review will occur parallel to the completion of those tasks. While we may not make my initial goal of completing this proceeding by December, early next year is doable and, in fact, that timing should work well with the other efforts on the ESCs and SAs that are underway.

Finally, some opponents seem to be engaging in revisionist history by stating that the Commission's decisions on the 3.5 GHz band were unanimous. Although – I think it is safe to say – that all Commissioners unanimously agreed that bringing new spectrum to the marketplace was beneficial and that reasonable protection mechanisms for incumbents were needed, that is where the consensus ended. I clearly expressed concerns, when I concurred in part to the initial order, about the PALs structure, knowing that it would be revisited in the future. Further, I dissented to these very issues on reconsideration. That is not unanimity.

As we go forward, I will keep an open mind. I will look at the substance of the arguments made, not overbroad statements or some artificial tally of how many comments were filed saying x, y or z. I would like to thank Chairman Pai for asking me to head up this review; Commissioner Clyburn who was willing to work with us, in the spirit of compromise, to get the document in a good place for her; and the staff for the speedy and good work they have done so far and the work that is yet to come.