Statement of FCC Commissioner Michael O'Rielly

Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives

Hearing on
"Oversight of the Federal Communications Commission"
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Good afternoon, it is a pleasure to be before this Subcommittee once again as it conducts further oversight of the Federal Communications Commission. I appreciate the opportunity to be here and welcome any questions you may have.

Before I discuss certain policy and other matters, I would like to reiterate my overall support for the way Chairman Pai has operated and managed the Commission during his short tenure as chair. While there is always room for improvement, the Commission is more open and transparent than it has ever been during my involvement as a Commissioner or as a congressional staffer. I also appreciate that Chairman Pai has promised additional process changes in the future, including codifying or memorializing those that have already been made. Just as we all expect our nation's communications providers to continually upgrade and modernize, so must the Commission's operating procedures.

Commission's Role in Recent Hurricanes

While I am on the topic of applauding the Chairman, I think he is due extensive credit for his leadership during the recent hurricanes of Harvey, Irma, Maria and others. The Chairman, his team, and the requisite bureau personnel were actively engaged in orchestrating the Commission's response and assistance during these difficult events. And what a trying time that was and still remains for many.

Some critics have tried to assert that the Chairman didn't do enough or should have done this or that differently. Others argued that he and his team should have been focused on changing our procedures for future responses or plan for the next crisis while in the midst of responding to the current one at hand. I disagree.

At numerous points, I heard repeated appreciation for the Chairman's work from those communications companies trying to serve those within the affected areas. From Commission actions, including approving requests for special temporary authority and waivers, to communicating with other involved federal government agencies, to getting supplies, equipment and personnel approved for access, the Chairman and his team were on top of the situation and kept everyone informed of the changing circumstances on the ground. As I see it, he was solely focused on preventing service disruption as best as possible, ensuring emergency information was provided via our nation's communications providers, and facilitating the private sector efforts to restore service to those people impacted by these dreadful hurricanes.

In fact, during these hurricanes, I continuously reassessed whether I, personally, could improve the Commission's response but realized that my value add would be minimal. In times of ultimate crisis, a unified and effective voice taking appropriate action is important.

Spectrum

A top priority of mine — along with improving broadband deployment — is to ensure that the electromagnetic spectrum is being put to the most efficient use possible. It's why I have spent so much time delving into the weeds on particular wireless issues and increasing my engagement with international regulators, including seeking reforms to the International Telecommunication Union (ITU).

To put this in perspective, in the last four months I have given eight spectrum related speeches, attended three international spectrum focused conferences (in Orlando, Bogota and Brussels), taken a lead role in reviewing the rules for the 3.5 GHz band, and advocated for reallocating mid band spectrum (above 1 GHz and below 5 GHz) at both the 3.4 and 3.7 to 4.2 GHz bands. And, I am pleased to say that the Commission is likely to release additional millimeter wave spectrum in the coming months as a result of a deal I struck with the preceding Chairman.

My overall goal of this work is to position the United States and our wireless carriers for overall success in the coming years. We know that internationally a number of nations seek to corner the market on the next generation wireless technology, commonly known as 5G, in order to reap the economic benefits and dictate the world's wireless future. I intend to ensure that United States' ingenuity and technological development are not unfairly hampered by others' quest for this premier position.

To effectuate spectrum policy internationally, I believe that reforms to the procedures for and U.S. engagement in the ITU are needed and appropriate. International spectrum harmonization should be a key priority but it cannot come at the expense of overall wireless technological progress. Additionally, the U.S. should no longer expect that sound policy will rule the day at the ITU, especially given our recent experiences at the World Radiocommunication Conference in 2015 when simple spectrum studies were blocked, potential agenda items were shoved aside for protectionist reasons, and new blocking mechanisms were imposed allowing countries to veto a neighbors' interest in 600 MHz spectrum allocations. I would certainly appreciate the Subcommittee's increased engagement in these issues in the coming months.

Domestically, it remains important to take advantage of technological improvements to use higher and higher frequencies, but we will still need to reallocate spectrum now dedicated for one purpose to other uses. As the insatiable demands of consumers for more mobility and broadband offerings continues, the Commission has the difficult task of reclaiming, reallocating, clearing and in some cases, facilitating spectrum sharing. A prime location for such efforts is the mid-bands, including the C-bands, and 3.1-3.550 GHz.

I'd also like to quickly address unlicensed spectrum, particularly the 5.9 GHz proceeding. The Commission has run its test on nine prototypes and is analyzing the results. In my opinion, it is time to bring this proceeding to a close. More importantly, the time has come to determine whether we still need DSRC altogether. At a minimum, it should not be used for any services that can be offered using other technologies available today. If DSRC no longer makes sense, the Commission could combine the 5.9 with the rest of the 5 GHz bands to expand current unlicensed operations and promote continued growth. Further, the Commission should look to opening the 6 GHz band for unlicensed uses.

In addition, the Commission has a lot of work ahead to remove barriers being imposed on broadband deployment by *some* state, local and tribal governments. These barriers tend to come in one of two forms: (1) delayed or non-existent approval processes for siting of necessary equipment, including towers and antennas; and (2) exorbitant fees for application procedures and the right to access certain properties. If we truly want to facilitate access to broadband by unserved Americans, the Commission will likely need to exert its authority provided in the statute to preempt certain government agencies acting in bad faith and hampering broadband deployment nationwide.

Auction Authority Problem

As Chairman Pai previously testified, the Commission faces difficulty in securing a financial institution to meet the statutory requirements to hold our upfront auction payments. Without a willing partner or a change in law, the Commission believes that it is unable to announce a schedule for future spectrum auctions, much less actually hold an auction. This means that spectrum auctions for additional millimeter wave bands and Citizens Band Radio Service (CBRS) are not being scheduled. In fact, unless this gets fixed quickly, it's likely that no spectrum auctions will be held next year and it won't be until mid to late 2019 before an auction occurs. This development will have an impact on potential investment in particular bands and may prove to tilt the marketplace in favor of less efficient or more expensive spectrum bands.

Thankfully, the Subcommittee has included a technical fix within its larger "FCC Reauthorization Act of 2017." While this would address the situation, it is possible that this larger legislation may take some additional time before being enacted into law. Accordingly, I respectfully request that the Subcommittee consider splitting off this one fix and moving it as a rifle shot through the legislative process. Fortunately, such action could match up nicely with Senate Commerce Chairman Thune's stand-alone bill for this purpose.

FCC Procedures & Process Improvements

I continue to believe that additional changes to the Commission's procedures both formal (via the statute and Code of Federal Regulations) and informal (via our internal procedures handbook) are necessary and prudent. While Chairman Pai has improved the situation, and promises more to come, there is only so much that he can champion given his other responsibilities. It's one reason I have remained engaged on this issue and see it as part of my responsibility as a Commissioner. Moreover, it

is clear that some changes can only be made legislatively, requiring the assistance of this good Subcommittee. In some regards, however, process improvements can only be accomplished if there is sufficient leadership and willingness to defeat the status quo.

Along these lines, I was disheartened to learn that certain Commission process improvements were removed during Subcommittee consideration of the "FCC Reauthorization Act of 2017." For instance, a provision to codify our recent practice to make public the documents for our open meeting at the same time they are circulated to commissioners was struck from the bill. I am aware of few people who disagree with this practice and have found a large number of converts who now actively support it, as it has been a tremendous success in reducing overall item confusion and unnecessary Commission ex parte meetings. A lay person just reading stories about the removal of these pro-process reforms may mistakenly see this as an effort to weaken the transparency and openness of the Commission. Having had multiple conversations with the Chairmen of the full Committee and Subcommittee I know of their commitment to these and other changes. I therefore hope these provisions can be revisited and included in the bill as it proceeds forward.

On another note, the Commission's perpetual struggle over the use of delegated authority and its limits continue. Like the previous Commission, current Commissioners seek a greater ability to pull items to the Commissioner-level that are scheduled to be released by staff under delegated authority. At the same time, there must be reasonable time limits for any item elevated from delegated authority and a process for addressing potential delays. Commissioners should use the elevation of an item to actively engage in a proceeding, not as a delay tactic. To rectify these issues, I have put forth what I consider a balanced plan to accommodate the differing interests. I have attached my blog outlining this proposal for the Subcommittee's review and consideration.

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I thank the Subcommittee for holding this hearing and look forward to any questions you may have.