

**Remarks of FCC Commissioner Michael O’Rielly
Before the American Enterprise Institute
April 19, 2018**

Thank you, Jeff Eisenach, for your kind words and introduction. It is a pleasure to be back with you, and I thank the American Enterprise Institute for the invitation to share some thoughts on policy issues before the Federal Communications Commission.

As some of you may know, I have a reputation of *trying* to be fairly substantive — some have said extensively boring — in my various speeches and remarks. I find comfort deep in the weeds of an obscure regulation or ensconced in the details of a policy debate. That may not be all that interesting to some, but if ever there was an audience that may appreciate such an approach, it would be this one. AEI is rightfully recognized as a preeminent think tank for its in-depth policy analysis, economic rigor, and scholarly research throughout Washington, D.C.

Nonetheless, if you find yourself dozing off, do give me a wink or a nod to change subjects. As American humorist and legendary toastmaster, Harry Herschfield, was quoted as saying, “My job is to talk; your job is to listen. If you finish first, please let me know.”

My goal today is to delve into four apparently unrelated policy issue areas being discussed these days and, hopefully, tie them together to paint a larger picture of this Commission’s commitment to sound policy, economic freedom, and fiscal constraint.

Advancing 5G Services

I want to start with one of the highest priorities for the Commission and me personally. Over the last three-plus years, the Commission has rightly focused its time and energy to ensure that next-generation, or 5G, networks come to fruition. Why is this so important? It’s not because this is the shiny new technology that can bring stated benefits of higher wireless speeds, lower latency, increased capacity, and many other features, although that is likely all true. Instead, it’s about a global race to be the first among many competing nations to 5G. As a regulator, a term I abhor, this is generally not our primary mission, but here, the ramifications are so significant, and our functions are so germane, that it has become a primary focus of mine. Leading the world in 5G will allow U.S. companies to help shape its future growth, standards, and capabilities – all of which have a tremendous impact on our future economic success. The alternative means that we would be dictated to by other regimes, many of which can’t be fully trusted, don’t believe in capitalism, don’t believe in freedom, don’t believe in fair play, don’t believe in the role of the individual over the government, and rebuke American leadership.

The bottom line is simple: we seek not to set industrial policy but to prevent others from doing so against our interests. That means, the Commission must create the appropriate regulatory environment for the U.S. private sector to undertake the huge capital expenditures critical for success. Key to this is making sure our wireless providers have large swaths of spectrum, both licensed and unlicensed, along with cell infrastructure builds unlike anything we’ve seen before.

So, let’s delve into spectrum policy. Two days ago, the Commission approved a public notice seeking comment on the auction procedures for the 24 and 28 GHz bands. This will help set the stage to make available new millimeter wave spectrum. The next step will be to finalize the rules and set an auction timetable for all the remaining high bands, starting with 37 and 39 GHz. Accordingly, wireless providers

need to know when these and other auctions will be held so that they can formulate business plans, create auction strategies, and obtain the financial resources necessary to participate. It still surprises me that some think that money grows on trees and that auction participation is somehow guaranteed. Did we not learn anything after the 600 MHz incentive auction? Indeed, companies have balance sheets, debt-equity ratios, and responsibilities to shareholders, and they need the requisite time to plan.

On that note, the Commission must also be better prepared by updating its auction software. After spending approximately \$100 million per year on our auction program, we ought to have greater flexibility and functionality when it comes to our auction procedures. This is especially true since our auctions, for the foreseeable future, are likely to involve more licenses, occur more frequently or even simultaneously, and be more complex. We cannot afford additional delays; the time to start modernizing our capabilities was yesterday.

Further, the Commission must expedite its mid-band efforts, as the international focus on 5G harmonization has centered on these frequencies and there are economic efficiencies from global harmonization. To that end, in the next few months we will complete our review of the 3.5 GHz, or CBRS, priority access license structure and adopt new rules. We will also continue to take the necessary steps to make the technical supporting systems operational so that unused spectrum in the band is available while incumbent users are protected.

Expanding on this success will require accelerating work on bands adjacent to 3.5 GHz, starting with the 3.7 to 4.2 GHz band. I've taken the lead in pushing for a reallocation of this band and now various ideas on how to clear it are on record, including a market-based approach filed by certain wireless and satellite entities. This method provides an attractive option that should be thoroughly considered, particularly because of the speed in which it could bring the spectrum to market. But, there are still some unknowns. To make this worthwhile, an adequate amount of spectrum – at least 200 or 300 megahertz to start – needs to be made available in this band. We also need more information about how the licensing would work. The Commission needs to issue a notice of proposed rulemaking this summer to explore all the relevant issues.

In the same notice, the Commission should take the next steps to reallocate the 6 GHz band for unlicensed services. This is particularly timely, with the release of a recent technical study demonstrating that such use won't cause harmful interference to incumbents. To the extent necessary, interference mitigation can resolve any arising problems.

On a related issue, just last month Commissioner Carr took the lead to relieve the burdens presented by historic preservation and environmental reviews on infrastructure deployments, particularly small cells. It's a project I've been actively involved in for quite a while and know how messy obtaining approvals can be. In the end, our action will allow for timely and cost-effective network builds, with huge savings available to expand these networks beyond the urban core. Later this summer, you should expect to see a complimentary item to reduce the barriers state and localities place on such deployments.

Closing out this topic, my goal is to secure the ability of U.S. industry to win the 5G race. The tools to make that happen – releasing additional spectrum and dealing with government-laid barriers – are in the Commission's crosshairs.

Proper USF Budgeting

Next, I would like to spend a few minutes on the federal universal service fund (USF) – specifically, setting an overall budget and allocating funding within that budget. These are necessary steps not only to provide certainty for program participants, but also to be able to manage the total impact on the consumers and businesses who pay extra fees on their phone bills to support USF.

Over the past several years, the Commission has conducted ongoing proceedings on each of the four programs – High-Cost, Lifeline, E-rate, and Rural Healthcare – to update our rules and ensure that they support broadband service. Not surprisingly, commenters in each of the proceedings have used these opportunities to advocate for more funding.

At present, the Commission has authorized spending of approximately \$11 billion for universal service. That's \$4.5 billion for High-Cost, \$3.94 billion (plus annual inflation) for E-rate, \$2.25 billion or more for Lifeline, and \$400 million for Rural Healthcare. But those numbers are not final. The Commission is currently considering additional increases for High-Cost and Rural Healthcare, and E-rate commenters have requested additional dollars to further expand that program, which, by the way, was doubled under the last Commission. Additionally, as program budgets are increasingly tied to inflation, some additional growth will happen automatically.

Without an overall budget across all four programs, there has been little impetus to control individual program spending. Or, to attempt some economic terminology, why choose "[guns or butter](#)" when you can have more of both! Of course, that's ultimately unsustainable. There must be a limit on the total amount we are willing to take out of the pockets of hardworking Americans.

In fact, the D.C. Circuit recently reiterated in a case involving AT&T that the statutory goal of providing "sufficient" funding is not simply "a means to sweeten the pot for providers" but rather is intended "to strike an appropriate balance between the interests of consumers and industry." In fact, "[t]oo-ample funding . . . may even itself violate the sufficiency requirements of the Act by so detracting from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market."

If the total budget cannot be increased beyond \$11 billion, and I don't think it should be, then it is time to decide how to apportion funding within the overall budget. Fortunately, the Commission has some flexibility within this topline figure.

According to the USF Administrator's annual report for 2017, actual program disbursements totaled \$8.85 billion. Of course, there is always some amount of adjustment that occurs after the fact, but that is an approximate figure for actual spending, and it is generally consistent with the prior year's disbursements of \$8.75 billion. That means there is about a \$2 billion difference between authorized spending and actual disbursements that could be shifted amongst the four programs.

How to allocate funding within the overall budget is a conversation I've wanted to have for a long time. There seems to have been an informal détente amongst different program stakeholders such that increases to one program are not opposed – or even commented on – by stakeholders from another program. That may have worked while the Commission was willing to spend more on each program. But with authorized spending topping \$11 billion, it is time to institute the practice that any further increases in one program must be paired with offsets from another. That's not intended to favor or

penalize a specific program. Rather, it should prompt a holistic and fulsome discussion in the record of whether particular funding increases are warranted. Viewed in isolation, discrete funding requests may seem appropriate, but once all program stakeholders have an incentive to highlight the costs and benefits, and identify any tradeoffs, the Commission may choose to prioritize other funding needs. In short, engaging in this type of discussion and analysis will produce better reasoned and more consistent funding decisions across the four programs.

Reviewing FCC's Children Television Rules

Another issue I have been working on is a broad review of the Commission's rules regarding the airing of children's programming, commonly referred to as Kid Vid. Essentially, by law, broadcasters are required to provide educational and informational programming to children in order to get their broadcast licenses renewed. In 1996, the FCC fleshed out a series of regulations on what exactly this requirement entailed. Specifically, broadcasters must air 3 hours of informational and educational programming for children that is at least 30 minutes in length, regularly scheduled, and aired between the hours of 7am to 10pm.

Unfortunately, the Commission's rules, while well intentioned, have not worked in delivering high quality content for children. There are a number of reasons for this. At its core, the Commission found a market failure in the delivery of children's programming and responded by trying to create a market through regulations. And, as is often the case when government tries to create a market, this endeavor failed spectacularly.

In fact, in data presented to me on the combined viewership of all four networks, there has been a 99 percent decline in children viewership ages 2 to 11 on Saturday mornings. That's an important segment of children that are simply not watching the Commission's mandated Kid Vid programming. What are they watching? Ironically, some are turning to online sites like YouTube – a completely unregulated platform that may deliver high quality programming to children, or, may label content as children's programming but instead offer something quite different. I have seen this firsthand as a father of a two-year-old.

Even worse, while the market the government sought to create never took off, other markets were killed in the process. For example, prior to our Kid Vid requirements, broadcasters aired programming under thirty minutes in length – like School House Rock – and unique programming that was not regularly scheduled – like After School Specials – that were oftentimes popular with children. Once the FCC determined that this would not count towards the broadcaster's "core programming" requirement, interest in producing such shows ceased.

Despite these shortcomings, I also understand that while the market has significantly changed and children like mine are fortunate enough to have a host of programming options at their fingertips – and I really mean fingertips – not all children are so lucky. While figures vary, we believe somewhere between 7 and 10 percent of the American population are over-the-air only families. These children's access to informational and educational programming is solely through their local broadcaster.

So where do we go from here? This summer, I expect the Commission to tee-up a rulemaking, based upon my recommendations, that will explore ways to breathe flexibility into our rules. In this rulemaking, we should eliminate the elements of our rules that have had unintended consequences and streamline the reporting requirements our rules currently impose. Further, we need to find a way to

focus our efforts on over-the-air only households that truly do not have other options. Finally, and most importantly, I am hopeful that throughout this process more people will weigh in on the costs and benefits of the Commission's Kid Vid requirements, so we can build a robust record on this topic.

FCC Process Reform

Finally, turning to one of my favorite topics at the Commission, I'd like to spend a few moments today discussing FCC process reform. Since joining the Commission, improving the general workings of the agency has been a top priority of mine. For example, having worked on a number of bills during my time on the Hill, it came as a surprise to me that the Commission voted on rules impacting major sectors of the economy without making the rulemakings or report and orders publicly available until after the vote. When I suggested changes to this practice, then-Chairman Wheeler and others suggested that such an idea was a non-starter and would bring about a regulatory Armageddon at the Commission.

Fortunately, shortly after Chairman Pai took the reins at the Commission, he began a pilot program to make Commission Meeting items publicly available in advance of our vote. After an early success, he made this practice permanent. And the dooms-day scenarios never materialized. In fact, transparency has resulted in more informative discussions, fewer unnecessary meetings, and, overall, a better work product. Who would have guessed it?

I believe this process reform has been a resounding success. So much so that we need to apply more transparency to our other items, including those on the Commission's circulation list. Otherwise, the Commission risks creating a secretive, potentially abusive path ripe for considering documents of any length and importance.

And, while I am giving the Chairman kudos, I would be remiss not to mention the establishment of the Office of Economics and Analytics (OEA), which will bring a more fulsome cost-benefit analysis discussion to our items. I know that this item in particular was near and dear to many people here today. Importantly, if the Commission doesn't know or understand the real economic costs and benefits of our decisions, we cannot fulfill our Congressional mandate to make reasoned and justified decisions.

It is my understanding that setting up this office is underway, and the Commission is currently undergoing hiring for key leadership positions. Once these positions are filled and the office is up and running, we should be able to quickly integrate its work into that of the Commission. To achieve this, in our item establishing OEA, I worked with the Chairman to ensure that the office will undertake a rigorous, economically-grounded cost-benefit analysis for any rulemaking deemed to have an annual effect on the economy of \$100 million or more. We also adopted a requirement that OEA, similar to the Office of General Counsel, will need to sign off on an item prior to its release to the public. Equally important, we must also ensure that such an analysis is credible and accurate. Therefore, I secured the Chairman's commitment that the Commission will move a separate rulemaking in the very near future for purposes of requiring OEA to follow the guidelines of OMB Circular A-4, which standardizes the way benefits and costs are measured and reported across executive agencies.

Ultimately, making meeting items publicly available three weeks in advance of a vote and establishing the OEA are key reforms that will certainly improve the interworking of the agency. I have a few additional ideas – 40 to 50 to be exact – that I hope to share with the Chairman shortly. Some of these are new, and some – like making circulation items public – you have heard from me before. Overall, my ultimate goal remains: to leave the Commission in a better procedural place than I found it.

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In conclusion, I am hopeful that the four issue areas I've just outlined today give you some comfort that this Commission is following the right course of action. Key, core principles – such as complying with the underlying law, reviewing the submitted record, and abiding by sound economics rather than political calculations – will continue to guide this Commission's outcomes.

I thank you for your attention and I'd be happy answer any question you may have.