

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100

The underlying premise of the item before us is incredibly sound. The 4.9 GHz band is vastly underutilized — and not just by a little bit. Seeking to produce greater efficiency and increase the uses of 50 megahertz of spectrum, at a time when the premium for spectrum is at an all-time high, shouldn't be controversial. And, this scarcity is precisely why the Commission must take action as soon as possible, not only on this band and the 3.1-3.55 GHz frequencies considered today, but also on the 5.9 GHz band.

While I certainly respect and support our public safety officials and truly appreciate all that they do to protect our communities, no Commission should let spectrum essentially lay fallow based on the notion that someday the allocation just might, possibly be widely used for its intended purposes. The messages of “we intend to use it if certain conditions are met” or “it'll be needed someday” are no longer credible or sufficient. For years, I have discussed the 4.9 GHz band and its relationship to the Spectrum Act of 2012, T-Band, and 9-1-1 fee diversion. Finally, Congress and the Commission are aligned in attempting to resolve some of these residual issues through their respective processes.

My first action when this item was circulated was to request a reversal of course and seek full commercialization of the band, while protecting existing incumbent systems. That is consistent with my approach to the NPRM and is driven by the fact that every expert admits that the U.S. must free more spectrum to meet the demand for future commercial wireless services. While this spectrum may not be an ideal 5G band on its own, it has been identified by the wireless industry as a very good candidate for that purpose if the Commission takes certain actions. Sadly, my request didn't win the day with my colleagues.

Compelled to pivot, I have tried to live within the rather, let's say, interesting approach taken in this item. I do have some concerns that this will just create another EBS-like mess, kicking the proverbial can and forcing a future Commission to revisit this whole structure. It is not entirely clear how or whether it will work at all, as proposed. There is also the distinct possibility that this item won't necessarily solve anything, but instead may even prolong uncertainty.

I am able to support the item, however, because, at the very least, it moves away from the status quo towards somewhat improved usage and commercialization of the band. Moreover, the modified version excludes states that are diverting 9-1-1 fees to other purposes from reaping any benefits from this spectrum largesse — such as New Jersey, New York, Rhode Island, and certain counties in Nevada. These states have proven themselves untrustworthy when it comes to managing precious consumer-paid fees. A bit later on today's agenda, we will consider an NOI that will hopefully result in the Commission dealing with this issue holistically someday. But here, we can immediately lock in a righteous policy change that ensures current diverters will pay a price for their maleficence, while seeking comment on a broader approach, including how to treat diverting states in the future. The leasing fees and other benefits contained in this item may be, in fact, modest compared to the diverted dollars, helping to explain the lengths to which some states will go to continue this practice. But the current item will take a tangible step — probably my last — to rectify the injustice of fee diversion.

In the end, we will just have to wait and see if any of the item's structure gains traction or survives future policymakers' second guessing. Having extensive experience on these matters, I'm a bit skeptical that will be the case.

For the reasons discussed above, I approve, and I thank the Chairman for working with me to ensure wrongdoing states aren't unjustly enriched.