

Statement of FCC Commissioner Michael O’Rielly

**Before the
Committee on Commerce, Science, and Transportation
U.S. Senate**

**Hearing on
“Oversight of the Federal Communications Commission”
August 16, 2018**

Thank you for the honor to appear before you today. My thanks to Chairman Thune, Ranking Member Nelson, and the members of this Committee for the opportunity to engage with you on many important issues and answer any questions you may have about the decisions and workings of the Federal Communications Commission.

At the outset, I want to commend Senators Thune and Schatz on their introduction of the “Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance Small Cell Deployment Act.” This bipartisan bill will help set the stage for 5G deployment by putting in place exceptionally reasonable processes and timeframes to review small cell applications and ensuring that any fees charged are based on actual and direct costs. Earlier this month, the Commission took its third step in our larger effort to expedite broadband deployment by approving our one-touch make-ready (OTMR) order, and I look forward to additional actions later this year on Commissioner Carr’s work to further extend wireless buildout relief. The STREAMLINE Small Cell Deployment Act sends a strong, bipartisan signal to the entire communications community that we must continue to remove unnecessary construction and application barriers in order to greatly aid the private sector expansion of broadband services throughout America, producing a more competitive and capable nation.

This, of course, is not the only important legislation that Committee members have put forth this Congress. I also commend the Committee for its part in the passage of the RAY BAUM’S Act of 2018, which included the MOBILE NOW Act.

Let me also take this opportunity to applaud Senators Gardner and Hassan, as well as their cosponsors on this Committee, Senators Johnson, Cortez Masto, Young, and Tester, on the AIRWAVES Act. The bill’s firm spectrum deadlines and call for auctions of key bands is of critical importance. Moreover, I congratulate Senators Wicker, Schatz, Moran, and Udall for introducing the Spectrum NOW Act, which would ultimately fund spectrum research, development, and planning activities.

ITU Reform

Back in 2016, I brought to this Committee’s attention my concerns regarding the workings of the International Telecommunications Union (ITU), which were based on my first-hand experiences at the 2015 World Radiocommunication Conference. As I attended other international conferences since then, it became more apparent that the ITU faces real problems, ranging from mission creep and bureaucratic overreach to basic ineffectiveness and blatant cronyism. I believe the ITU can be beneficial for U.S. interests and think that it can serve an important function. But, change is needed to ensure it remains a viable institution. I recently suggested several ITU reforms in an Op-Ed, which I outline here.

First, the ITU needs to focus on its main missions – and primarily on global spectrum harmonization – instead of allowing member states to veer the discourse and regulatory activity towards the shiny new technologies of the day, such as the Internet, cybersecurity, and drones. For example, the recent ITU “Global Symposium for Regulators” focused on the issues of privacy, data security, IoT, and artificial intelligence. While important, these are outside on the ITU’s mission. Meanwhile, there appeared to be little discussion of spectrum policy, which should be of great importance to a group of global telecom regulators. Therefore, I suggest that there should be some primacy established – either in terms of financial resources and/or mission attention – with regards to issues explored by the ITU. Specifically, no fewer than eighty percent of all expenditures or events must be centered on spectrum policies.

Second, the ITU has a staffing problem. Staff dictates the priorities of the ITU to perpetuate their personal views and to preserve their own jobs, operating without sufficient oversight or control by elected leadership. They choose the projects to pursue; hire the technical consultants who tend to reconfirm their desired outcome; frame debates to be held; and so much more. These issues can be easily corrected through such procedural safeguards as preventing staff from, among other things, self-dealing, making decisions in an isolated manner, or committing funds without oversight; requiring detailed budgeting; and ensuring that more decisions are made by member states rather than through delegation.

This leads me to my third point: new, visionary leadership is needed. Elected leadership positions at the ITU operate on the get along and get promoted premise. Instead of electing the most qualified person, member countries tend to vote for the next person in line from the perceived lower rung. Talented outsiders with fresh perspectives are needed to rectify management flaws, provide new ideas on its fundamental charges, and do the hard work to get critical spectrum bands realigned and put to their highest use. To accomplish this, the ITU needs to adopt a policy that I strongly disagree with when it comes to domestic politics: defined term limits for leadership positions.

In the end, the United States will pursue the best course of action to meet its own spectrum needs. It is up to the global community to either increase the likelihood of ITU success — by adopting many of the ideas presented above and others as well — or risk further fragmentation and like nations pursuing spectrum policy elsewhere.

Federal Broadband Efforts & Potential Pitfalls

As I recently stated, the Commission is focused on taking every necessary and appropriate step to provide all Americans the opportunity to access broadband services. According to the last FCC report, at least 14 million Americans do not have access to broadband of sufficient quality to meet our standards. From our subsidy programs to removing deployment barriers to reducing unnecessary regulatory burdens, the Commission is working very hard to address these unserved households.

At the same time, the Commission’s efforts should be examined in parallel with programs by other Federal entities. Today, there are three primary Federal agencies that provide funding to aid the private sector expansion or maintenance of broadband offerings: the FCC, the Department of Agriculture’s Rural Utility Service (RUS), and the Department of Commerce’s National Telecommunications and Information Administration (NTIA). On an annual basis, the Commission provides, from ratepayer collected funds, over \$4.5 billion for the Connect America Fund (CAF) to support direct and measurable broadband buildout in high-cost areas. Meanwhile, Congress recently

allocated, as part of last year's Consolidated Appropriations Act, 2018, an additional \$600 million for a new broadband pilot program, governed by certain conditions, to be administered by RUS. Finally, additional broadband funding is being considered as part of both Senate and House Farm bills.

While efforts to provide RUS with new Federal money are commendable, there is a potential for certain problems to arise. Part of the problem stems from the potential to allow RUS funding to be used for fully served or what some consider underserved areas. Regrettably, "unserved" is essentially defined as an area already having service or multiple broadband providers. Having travelled this great nation, I have met with Americans living in truly unserved areas with zero providers, not one or two existing ones hoping the Federal government will fund another. To accurately reflect this reality, I urge Congress to consider modifying this definition.

Moreover, there is a major disagreement over what should qualify as broadband for purposes of Federal funding. I certainly would like for all Americans to have sufficient broadband speeds for whatever tasks they seek to accomplish. However, there is simply not sufficient funds to subsidize "fiber" broadband builds, either wired or wireless, to every household nationwide, which would cost hundreds of billions of dollars. This is why the Commission has focused its CAF funds on broadband projects with speeds above 10/1 Mbps, and even at that level there is tremendous demand to add additional budgetary resources to reach more households. Although not ideal, the intent is to, at least, ensure every household has this level of service before focusing on increasing speeds further. Allowing the different funding programs to have their own speed requirements greatly increases the likelihood that a tremendous effort will go to overbuilding areas with service today, including areas funded or expected to be funded by the Commission.

Fundamentally, Federal funding should be targeted to addressing those 14 million-plus Americans without any broadband today. Among other ideas, I have advocated having RUS, NTIA, and the Commission coordinate actual implementation of the differing programs. In sum, the program rules need to be written with strict prohibitions on duplication with other existing programs, alignment of speed requirements, and a focus on the truly unserved. As Congress concludes the Farm bill this fall, I hope you will consider these safeguards.

9-1-1 Fee Diversion

I firmly believe that the ongoing problem of 9-1-1 fee diversion by certain states and territories must be addressed. Such diversion has real consequences for the public safety community and the American people. Underfunding Public Service Answering Points (PSAPs) can lead to significant public safety problems, including longer wait times, fewer or overworked personnel, and outdated or inferior equipment to handle the call loads. It can also prevent 9-1-1 call centers from modernizing to NG9-1-1 technologies. At a minimum, allowing states to deceive consumers into paying fees for the 9-1-1 system and transferring the money elsewhere undermines the system's integrity. I thank my colleague, Commissioner Rosenworcel, for working with me to address this issue. Just last month, we sent a letter together to both the Republican and Democratic Governor Associations, urging their leadership to ensure that states collaborate with the FCC on our data collection and recognize the public safety harms associated with diverting these vital funds.

In December, the Commission submitted its ninth annual report to this Committee showing that, in 2016, five states and territories diverted almost \$130 million away from 9-1-1 enhancements and towards other, unrelated purposes. Unfortunately, the FCC must rely on self-reporting by states

and territories. This can lead to underreporting or a complete failure to respond altogether. In fact, seven states and territories did just that. It seems some states have figured out that instead of being labelled a diverter, they would rather just be known as a state that didn't submit the necessary paperwork. Take New York, for example, which failed to submit a report in response to the Commission's data collection, but sufficient public record information existed to support a finding that New York diverted "substantial" funds for non-public safety purposes. Moreover, since looking into this matter, my office has uncovered that Puerto Rico and Guam – both of which failed to respond to Commission inquiries – diverted 9-1-1 funds in 2016.

Fortunately, there is some good news to report. It turns out that Illinois, though labeled a diverter in 2016, actually did not divert 9-1-1 funding that year and has certified to my office that it does not plan to divert such funding in the future. Further, New Mexico, one of the largest diverters in 2016, has explained that its diversion was due to a unique situation in which the state faced extreme insolvency that has since been resolved. New Mexico had not diverted funds prior to 2016 and has explained it will not divert these funds again. Oklahoma and the Northern Mariana Islands also confirmed to me that they did not divert funds in 2016, despite failing to submit initial documents to the Commission. Finally, Puerto Rico, in receiving additional USF support to rebuild its communications networks, has committed to rectify its diversion by the Commission's 2018 report.

But, not every state has been a success story. While initial momentum in Rhode Island was encouraging, the state ultimately doubled down on its diversion practices and simply renamed its 9-1-1 fee. Moreover, in New York and New Jersey, state officials have shown no interest in eliminating this practice. And, in Guam, state officials appear more interested in debating the legality of their fee diversion than actually recognizing the harm diversion causes to its people and discussing ways to eliminate the practice.

On this note, we must be more aggressive with recalcitrant states, as, for the most part, identifying and shaming such states has not sufficiently worked. Legislation has been offered in the House of Representatives to assign the process of designating acceptable purposes and functions for 9-1-1 funds to the Commission, rather than the states as allowed under current law. This is a key first step, as states like Rhode Island, New York, and New Jersey, and territories like Puerto Rico and Guam, have passed statutes over the years actually requiring the diversion of 9-1-1 funds for non-public safety related purposes. In the case of New Jersey, lawmakers have claimed it will take a constitutional amendment to end the practice. I understand that Members of this Committee are also working on a legislative solution to this atrocious practice, and I stand ready to work with anyone interested in bringing consistency and clarity to this matter.

Spectrum Policy

The Commission has been hard at work ensuring that sufficient spectrum is available for next-generation wireless services. While I applaud and support the Commission's plans to hold auctions in the 24, 28, 37, 39, 47 GHz, and hopefully other high bands in the very near future, the Commission is also hard at work seeking to make additional mid-band spectrum available. As you are well aware, there are no greenfield mid-band frequencies available for 5G. The 3.7 to 4.2 GHz band, or C-band downlink, is attractive because it provides significant contiguous spectrum and the largest satellite operators are receptive to reducing their spectrum footprint using a market-based spectrum reallocation approach. The Commission must conclude the proceeding for determining how to reallocate this band promptly given its importance both domestically and internationally for future wireless offerings. In doing so, I

believe that any reallocation plan must be completed fairly quickly; release a sufficient amount of spectrum, such as 200 to 300 megahertz or more; and ensure that current users of the C-band satellite services – primarily broadcasters and cable providers – will be accommodated on the remaining C-band, other satellite spectrum, or through different technologies.

This plan must also permit unlicensed use of the C-band uplink spectrum, or 6 GHz band. As Chairman Thune recently noted to the Commission, the 6 GHz band is a necessary ingredient to address the need for more unlicensed spectrum. This spectrum, along with the potential opening of the 5.9 GHz band and combined with the existing 5 GHz band, will provide the unlicensed community with access to a significant swath of spectrum, creating wide channels for Gigabit services. Moreover, it will enable us to meet our statutory obligations under the MOBILE NOW Act.

The last piece of the mid-band puzzle is permitting additional wireless operations in the frequencies below 3.5 GHz. Fortunately, the review to ensure that the 3.5 GHz licensing structure is attractive to as many users and use cases as possible and the work on the databases that will enable maximum use of 3.5 GHz is wrapping up. Last month, the FCC announced the procedures and deadlines for conditionally approved Spectrum Access System Administrators to file initial commercial deployment proposals, setting the stage for the first SAS-enabled 3.5 GHz markets hopefully later this year. Moreover, I have formulated recommendations on a way to modify our existing rules for PAL licenses and hope that this will be ready to be considered at an Open Meeting soon. Assuming the item is adopted, I hope that we can move to an auction early next year.

We must now turn to 3450-3550 MHz, which NTIA is currently reviewing for reallocation for commercial wireless use. NTIA should complete this work expeditiously and clear this band. But, we also cannot stop at just 100 megahertz. We must look to those frequencies right below 3450 MHz, along with any others that can be put to more efficient use.

To facilitate the reallocation of Federal government spectrum, I have suggested adding appropriate sticks to the current carrot approach contained in law and suggested by others. At a minimum, as both Commissioner Rosenworcel and I have stated, there is an opportunity to put a market value on current federal spectrum holdings in order to ensure that they are appropriately quantified. Once implemented, it allows policymakers to make judgments based on an additional factor when considering and reviewing the spectrum holdings of the Federal government. I would argue that any valuations can rely initially on conservative estimates as they will be quickly adjusted over time by market forces. I thank Senator Lee for his interest in this, and, again, am available to provide any needed technical assistance on this matter.

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