DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: ***Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185.***

I must respectfully dissent from this waiver order that exempts Grain Management, LLC (and other similarly situated parties) from the bright-line trigger of the attributable material relationship (AMR) rule. I do so because I am not persuaded that the standard for a waiver under section 1.925 of the Commission's rules has been met.[1] I am also concerned that today's action sets in motion an effort to undermine the designated entity rules.

Starting in the 1990s, the Commission established rules enabling independent small businesses to receive bidding credits—government subsidies provided by the American people—for use in spectrum auctions. Over the years, the rules for these "designated entities" were refined to prevent instances of abuse and to promote facilities-based communications service. Specifically, the AMR rule aims to limit a subsidy recipient's ability to merely lease spectrum to other wireless providers instead of building out its own network. The stated concern being that these lease agreements could unduly influence a designated entity's decisions, increasing the potential to operate as a shell company.

Section 1.925 allows a rule to be waived if the petitioner can demonstrate that the rule's underlying purpose would not be served, or would be unduly burdensome or contrary to the public interest.[2] In this case, Grain obtained spectrum licenses on the secondary market. It then immediately leased *all* of this spectrum to AT&T and Verizon, thus making their revenues attributable and rendering Grain ineligible for designated entity status.[3] Despite full knowledge of the AMR rule when it entered into these business arrangements, Grain now wants a waiver so that it can pursue bidding credits in the upcoming AWS-3 spectrum auction. Unfortunately, this item provides little to no analysis as to how waiving this rule will promote facilities-based service. There is also no attempt to adequately explain how this category of leasing arrangements could not result in undue influence and how this waiver is, therefore, consistent with the underlying purpose of the AMR rule. Moreover, this rule is not overly burdensome because there is nothing that prevents Grain from participating in future spectrum auctions or transactions; they just wouldn't get a special subsidy in the process.

Going forward, I will monitor the implementation of this item closely and I will be skeptical of any attempts to water down our designated entity rules. Let's be clear: bidding credits should be awarded sparingly to bona fide small businesses after going through a stringent and comprehensive review process. Otherwise, we deprive the American people of the opportunity to rightfully maximize revenues for the use of their public resource.

In closing, as I have said previously, the full Commission should have the opportunity to vote on all issues of significance. I, therefore, thank Chairman Wheeler for circulating this item for a vote.

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[1] 47 C.F.R. § 1.925.

[2] *Id*. § 1.925(b)(3).

[3] If a designated entity has a lease agreement for "more than 25 percent of the spectrum capacity of *any one* of the applicant's or licensee's licenses," the revenues of the lessee are attributed to the applicant. 47 C.F.R. § 1.2110(b)(3)(iv) (emphasis added).