

DISSENTING STATEMENT OF COMMISSIONER MICHAEL O'RIELLY

Re: *In re Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268*

As with the Commission's May Incentive Auction Order, today's notice rushes forward in an attempt to put some of the pieces of this very important puzzle together. Yet, it still lacks a solid foundation. Many of my concerns from the earlier item either still remain or have come to fruition. Although I requested several edits to this Public Notice to enable us to seek comment and have a fulsome record to base our decisions, they mostly fell on deaf ears. Rather than shore up our overall path, the Commission proposes a series of unnecessary, outcome-driven machinations and tentative conclusions to bolster its ability to claim success at the close of the auction. Some may say that tentative conclusions are helpful to provide a plan that commenters can approve or criticize, but experience shows that what you see proposed is essentially set in stone. In other words, the outcome of many of these issues seems predetermined. Hopefully, I am wrong and the Commission will listen to the concerns of my fellow Commissioners. I think staff can realize that more work is necessary. Sadly, at this point, I do not have confidence that the complex and confusing proposals in this public notice will maximize revenues or ensure that the spectrum goes to its highest value use.

First, how can one conclude that an auction is successful if close to 20 percent of Americans (measured on a weighted basis) would be covered by impaired licenses? While we would all concede that some market variation may be inevitable, a nationwide impairment threshold of an arbitrary number of 20 percent is both unsupported by any facts and could effect a large part of the country, and therefore too many American consumers. Additionally, this is likely to deflate auction revenues. If impairment is to actually be retained and permitted, I sought that we actually have a number anchored in fact based on projections of likely auction outcomes, but that was dismissed.

Second, I strongly oppose the Commission's continued exploration of dynamic reserve pricing, which would only increase impairments and market variation. Under this system, a broadcaster, who is willing to accept a Commission offer and cannot be repacked in the TV band, would nonetheless see the price of their station drop. This is just plain wrong; a station that would cause impairments that agrees to go off air for a certain price should be bought out. Instead, this broadcaster would be forced to either take a lower price or possibly drop out of the auction to be relocated to a spectrum channel that will be allocated for mobile wireless use. How does this provide the certainty and comfort to broadcasters needed to be willing to participate in an auction that risks their livelihood? This idea should have been dumped months ago.

Third, the Commission's generic license blocks are no longer truly fungible. Auction participants will bid on two separate categories of licenses based on the amount of interference that the license may receive from broadcasters. The parameters for "Category 1" and "Category 2" licenses are not grounded in facts or data. Accordingly, I suggested that, if separate categories of licenses are pursued, we seek general comment on what percentage of impairments should be used to define these two categories. That didn't make it either.

Fourth, to add insult to injury, it is now proposed that entities eligible for reserve licenses—which were created so that selected participants could obtain sub-1 GHz spectrum at below market rates—will receive further preferential treatment by having greater access to license blocks with the fewest impairments. In effect, today's Public Notice doubles down on the proposal to provide extra benefits to a select subset of companies that feel that they are disadvantaged because of their low band spectrum holdings. Many of these companies, however, are in their predicaments due to past company decisions. It is not the role of the Federal Government to resolve such issues. Simply put, under this proposal, reserved-eligible entities would have access to the licenses with the least impairments; the largest companies could be relegated to bidding on the more impaired licenses. Why would anyone depress the

bidding activity for the most valuable licenses? The licenses with the least impairments should be going for full market value.

Fifth, the complexity of the forward auction structure may limit the ability of participants to bid vigorously for the spectrum. In their bidding plans, applicants will have to take into account the questionable extended and the assignment rounds. Establishing such extra rounds means bidders may hold back funds because it's unknown whether they will need to contribute more under these two bidding structures.

Lastly, there are a host of other problems with this item, including the possibility that broadcast stations could be placed in the duplex gap or guard bands, issues about how reverse auction opening prices should be set, whether impairment discounts should be offered and how they should be calculated and continued concerns about the final stage rule. These should have benefitted from further comment instead of jumping to tentative conclusions.

As I have said before, Congress challenged the Commission with a complex technical undertaking with this incentive auction. I do not minimize the efforts of staff in preparing this document. However, I must dissent to today's notice for all of the reasons above. Fortunately, this is a notice and we still have time to get this right. Although my input is not reflected in this notice, I remain determined that this should be a collaborative process and that the opinions of all should be considered. This auction is of utmost importance and we must work with all interested parties to ensure success.