

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND CONCURRING IN PART**

Re: *Amendment of the Commission's Rule with Regard to Commercial Operations in the 3550-3650 MHz Band, Report and Order and Second Further Notice of Proposed Rulemaking, GN Docket No. 12-354.*

I am excited about the possibilities that may arise from our action today. In sum, it will make available 150 megahertz of spectrum for new uses, whether for small cell systems, wireless backhaul, or a technology that has yet to be imagined, let alone invented. Let's just see what services our entrepreneurs and innovators can amaze us with using the two commercial prongs of the three-tier spectrum access structure.

Although I support placing this spectrum into the marketplace and approve of this item in part, I do have some reservations about several of the rules we adopt today, so I concur in part. What some have nicknamed the "innovation band," 3.5 GHz is a real-world experiment with many components – or variables. If services are able to prosper in this band, it will be hard to know which components were helpful and which were not. Sometimes, too much experimentation can harm and ultimately delay successful deployment of new services. I hope that we have struck the right balance here, but only time will tell.

First, I am pleased that my calls to reduce the exclusion zones' size were heard. Last April, when we released our Further Notice, a full 60 percent of the U.S. population was located in areas where 3.5 GHz services would be unavailable. The exclusion zones adopted today are 77 percent smaller than those originally proposed. Nonetheless, the covered area captures several of this country's largest cities, where the shortage of spectrum is most acute. Thus, we must exercise diligence in ensuring that the zones continue to shrink. As I previously suggested, these remaining exclusion zones must be converted into coordination zones, and the Environmental Sensing Capability (ESC) system is poised to do just that.

Second, I am concerned that some rules may hinder development of the Priority Access Licenses, known as PALs. I question whether auctioning PALs for three year terms with no renewal expectancy will create a meaningful incentive to entice auction participants. Similarly, while I thank the Chairman for agreeing to changes that facilitate PALs in areas where there is more than one auction bidder, I had hoped our rules would include a mechanism whereby any entity could receive a PAL even if mutually exclusive applications, which are necessary to trigger an auction, are not filed in a particular census tract. The Commission ought to encourage a diverse array of business models. Many entrepreneurs, even those living in rural communities, have told me of their strong preference for PALs, which they explain would ensure better reliability and quality of service. Our rules must not foreclose these prospective licensees from obtaining PALs just because they are the only one in a given census tract wanting priority access. We need to fix this in the near term.

Third, on a macro level, today's ruling relies on certain premises that I generally do not support. Spectrum aggregation limits are not necessary in the 3.5 GHz Band, nor is the Section 307(e) license-by-rule framework for General Authorized Access (GAA). Despite the cute play on names, this is not the CB Radio service. Instead, the GAA tier should be administered under the Part 15 rules, which have been instrumental to the ubiquitous nature of unlicensed use. Further, I oppose any attempt to ensnare 3.5 GHz offerings that resemble Broadband Internet Access Service under Title II or subject them to the requirements of the net neutrality order.

For those of you who have not read the item, which is just about everyone since we haven't made it available as I would hope, we are electing to defer action on several issues in this proceeding for the time being. Some final decisions will be made in response to the further notice accompanying this order, some will be put into the hands of a multi-stakeholder group, and others will be made in the context of

future auction comment and procedures public notices. That means there is much more work to be done in this area.

Let me raise a couple of other points. Some people talk about the structure set up in this item as a new paradigm for future spectrum policy. It is premature to declare this a new paradigm, and I am not convinced that it is. Instead, it will likely be one way among our existing structures that can be used in the more difficult situations where government users absolutely cannot move. As I have said before, spectrum clearing and exclusive licensing will remain in high-demand, as reconfirmed by the AWS-3 auction and likely by our upcoming incentive auction.

Separately, the Commission needs to do more to facilitate the siting of small cell systems. Although we do not know the array of services that may develop, there is one commonality: they will not come to fruition without infrastructure. To ensure that the new services flowing from this 3.5 GHz spectrum reaches the hands of American consumers as quickly as possible, we must remove the burdensome roadblocks preventing installation of small cells, whether due to hyper-regulatory state, environmental or historical review. Small cell infrastructure deserves the Commission's immediate attention.

I thank the Chairman for incorporating a number of my suggested edits, including agreeing with me that the auction comment and procedures public notices should be voted on by the full Commission and ensuring that user information will not be stored in the Spectrum Access System (SAS) and thus potentially available for questionable purposes.

Finally, I do not underestimate the efforts of the Commission staff, which have gotten us to where we are today. I thank you all for your hard work.