STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership, For Consent to Assign Licenses and Authorizations*, WT Docket No. 14-144.

We have before us the first application where the post-transaction holdings of sub-1-GHz, or low-band, spectrum triggers the "enhanced review" adopted in the June 2014 *Mobile Spectrum Holdings Order*.[1] In that order, the Commission implemented a flawed policy to facilitate the acquisition of frequencies below 1 GHz by certain favored entities. To promote this agenda, the Commission not only adopted a set aside, or reserve licenses, in the 600 MHz incentive auction, but also held that, if an applicant would hold more than one-third of the available low-band spectrum when a secondary market deal closes, this would be treated as an "enhanced factor" in the case-by-case analysis to determine whether a transaction cases competitive harm.[2] In total, it is incomprehensible to insert additional vagaries and uncertainty into our transaction review process that could allow for the picking and choosing of preferred winners and losers.

The *Mobile Spectrum Holdings Order* does not provide concrete information on how this "enhanced factor" would be applied going forward.[3] Instead, the specifics as to how these transactions will be evaluated would have to be gleaned from future orders responding to specific transfer applications. But today's order also provides little guidance as to how this "enhanced factor" is weighed in the Commission's larger competitive review, and it does not provide any certainty to prospective applicants as to whether a transaction is likely to be approved or not. Nonetheless, I guess I should be pleased that the vague language in the *Mobile Spectrum Holdings Order* is not being interpreted as a flat-out ban on any acquisition that triggers an "enhanced review." And, because it does not affect the outcome of this particular transaction, I am able to approve today's order despite this needless process and mockery of sound spectrum policy.

I am well aware, however, that this will not be the last word on the issue, and we will likely find out more about this "enhanced review" when the Commission seeks to inanely block a transaction or orders divestitures based on an artificial supremacy of sub-1-GHz holdings. When this occurs, it is unlikely that I will be able to support such a decision. I simply do not agree that preferential treatment should be provided to certain entities at the expense of their competitors, especially when any perceived spectrum deficiencies are the result of their own doing.[4] Further, the FCC should not be influencing the free market or prices by hindering the transferability of spectrum to the Nation's most popular wireless providers. Placing any restriction on who can acquire low-band spectrum in the secondary market devalues this resource and allows entities to acquire it at sub-market rates. In sum, spectrum should go to its highest value use.

[1] Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6231 ¶ 256 (2014).

[2] *Id.* at 6233, 6239 ¶¶ 267, 283.

[3] *Id.* at 6240 ¶¶ 286-87.

[4] *Id.* at 6275-76 (Dissenting Statement of Commissioner Michael O'Rielly).