

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

Re: Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, and Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap, ET Docket No. 14-165, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Report and Order.

As we seek to maximize our valuable spectrum resources by opening bands to additional uses, the potential for harmful interference between existing and new operations can increase. Our job, as best as possible, is to rely on sound science to determine how devices will work in a real world environment. And this item demonstrates that there is very little consensus on many critical inputs.

After rounds of engineering and technical submissions by interested parties, the Office of Engineering and Technology has made their calculations and analysis about how the various stakeholders can amicably utilize the 600 MHz and TV bands. Although I support today's item, I do have some concerns that things may not work out as conveniently in real life as they do in this item. While I trust that OET's findings are correct, there is a lot riding on them.

For this reason, I requested that interference mitigation measures should be strengthened for wireless licensees, to ensure that we are fully compliant with the provisions in the law. The Spectrum Act states that "[t]he Commission may not permit any use of a guard band that the Commission determines would cause harmful interference to licensed services,"¹ signaling Congress' clear intent that licensed wireless services be protected from interference. The wireless industry, based on its engineering studies, however, has expressed serious concerns about the potential for harmful interference from unlicensed devices in the guard bands and duplex gap.

Although the item states that the FCC can take "immediate corrective action upon determining that there is harmful interference," there doesn't appear to be any process in place to ensure that the Commission's finding of interference will be timely. If the Commission is convinced that harmful interference is unlikely, then providing a means for the expeditious resolution of interference concerns should not be burdensome to the Commission. Not only does the Spectrum Act call for such measures, but the wireless industry understandably needs safeguards to provide the necessary comfort to bid the large amounts needed for this auction to be a success.

Similar interference concerns have been raised by the Wireless Medical Telemetry Service (WMTS) users, which going forward will share channel 37 with unlicensed devices. I appreciate the work of my colleague, Commissioner Pai, to ensure that hospitals that rely on this spectrum for such devices as heart and fetal monitors, something I have learned more about lately, can avoid harmful interference. While I would have preferred that the new language include an expiration date to ensure neither side has an incentive to slow the negotiations to reach a private sector sharing solution, preferably one based on coordination zones rather than exclusion zones, everyone should be on notice that all parties are expected to work together to find an acceptable sharing outcome. In the end, my colleagues and I expect channel 37 to be available for unlicensed use in a way that protects WMTS service.

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6407(e), 47 U.S.C. § 1454(e) (2012).

Relatedly, the Commission needs to do further work on its technical rules regarding antenna height in rural America, as it relates to operating in both the TV band and other unlicensed bands. In those areas where spectrum constraints are less, such as rural areas, the Commission needs to seriously examine allowing wireless Internet service providers (WISPs) to place facilities on higher towers in order to avoid the surrounding topography. The current arbitrary height limitation does not make sense in every circumstance and may harm broadband deployment. Specifically, if done correctly, this could allow WISPs to expand their coverage areas, benefitting Americans in rural areas unserved by broadband providers. I hope that the Commission will review these rules in the near term.

Further, the Commission prohibits the use of personal and portable devices below Channel 14 without an experimental license. This is the same type of artificial limitation that was previously implemented and finally being eliminated to allow fixed devices on channels 3 and 4, personal/portable devices on channels 14 through 20, and white space devices on channel 37. The reasoning provided for this restriction is that, below Channel 14, the antenna size needed to receive a signal would be too large for a mobile device. Although this may be true now, we don't know what the future brings, and parties to this proceeding have expressed interest in these channels. We should provide industry and entrepreneurs the ability and incentive to innovate without additional regulatory barriers, as opposed to limiting opportunities that could benefit the development of new options for Americans.

For these reasons, I approve in part and concur in part. I thank the Office of Engineering and Technology for their efforts on this highly technical item.