

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Amendment of Part 90 of the Commission's Rules, WP Docket No. 07-100

It has been 16 years since the 4.9 GHz band was allocated to the public safety community, and it is still woefully underutilized. That is not sustainable in an environment in which every megahertz of spectrum, especially below 6 GHz, needs to be fully scrutinized and maximized in quick order. While the Commission's original allocation was more than likely well-intentioned, it is way past time to take a fresh look at this 50 megahertz of spectrum. For this reason, I support this Notice of Proposed Rulemaking (NPRM) to consider a new path forward for this band.

At the same time, I am not so keen on several of the options proposed in the item and the direction we may be headed. For instance, the majority of the item discusses technical and licensing modifications to increase use of the band, and then considers such ideas as expanding access for critical infrastructure (CII) entities, allowing public safety to lease their spectrum, and permitting sharing where public safety would have priority over other users. Only at the very end does this item discuss the idea of redesignating this spectrum for commercial use.

By way of background, this band was originally slated to be used for flexible, fixed, and mobile wireless use, assigned through competitive bidding.¹ While this was the plan in 2000, the Commission abruptly changed direction in 2002, allocating the band to public safety.² The Commission made the decision to reverse course based on assertions in the record that there was great need among the public safety community for spectrum for emerging broadband technologies, along with statements that "the spectrum [would] be used primarily in emergency situations, and they need[ed] dedicated spectrum that [would] be reliably available without delay."³ The urgent need for this spectrum appears to have never materialized and, today, no more than 3.5 percent of potential licensees are using these frequencies.⁴

Further, while the uses envisioned were primarily high-speed data technologies and wireless local area networks for managing emergency incident scenes, along with potential dispatch operations and vehicular/personal communications,⁵ it appears that the limited spectrum in use may actually be utilized now for other purposes. While we will obtain more information through this proceeding, some entities appear to be using the spectrum for video security and roadway cameras, internet access for travelers and tourists, collection and communication of traffic and weather data, speed and message signs along roads, and surveillance.⁶ These purposes do not fall into the category of "cutting edge technologies that will

¹ The 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, Notice of Proposed Rulemaking, 15 FCC Rcd 4778 (2000); The 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, Second Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 3955, 3961 ¶ 8 (2002) ("2002 4.9 GHz Order").

² *Id.* at 3962 ¶¶ 10-11.

³ *Id.* at 3969 ¶ 28.

⁴ *Supra* ¶ 1 (stating that the number of licenses has increased slightly from 2,442 in 2012 to 3,174 today).

⁵ 2002 4.9 GHz Order, 17 FCC Rcd at 3578 ¶ 1.

⁶ *See, e.g.*, VDOT, Utilization of the 4.9 GHz Band in Transportation and Emergency Response Applications, Presentation, Feb. 25, 2011, https://transition.fcc.gov/pshs/docs/summits/4.9GHz-workshop/Presentation_BROWN.pdf.

enhance [public safety's] ability to share critical and time-sensitive information during emergencies and other critical situations."⁷

In light of the underutilization of this band, use of the band for non-public safety purposes, and the relative progress of FirstNet, I would argue, and I know some of my colleagues agree with this view, that it is time to redesignate this valuable spectrum for commercial use. Today's notice provides the opportunity to contemplate whether this spectrum, which is located in close proximity to the 5 GHz unlicensed band, should be allocated for unlicensed or licensed use, what the technical rules should be, and how the Commission should deal with the incumbents. I thank the Chairman for accepting edits to this section to ensure that we will have a fulsome record on these issues.

Additionally, we need to recognize that the current MOBILE NOW bill, which is on path to become law in a scant few days, requires the Commission and NTIA to identify 255 megahertz of federal and non-federal spectrum for fixed and mobile wireless broadband, with at least 100 megahertz under 8 GHz for unlicensed use and 100 megahertz under 6 GHz for licensed services.⁸ It is likely that the 4.9 GHz band will be needed to reach these spectrum totals.

In sum, this spectrum is underutilized and, as I have advocated in other circumstances, such as DSRC in 5.9 GHz, it is time to reconsider and correct past mistakes before another decade goes by. I look forward to engaging with interested parties and my colleagues on this valuable spectrum and ensuring that it is put to its most efficient and best use.

⁷ 2002 4.9 GHz Order, 17 FCC Rcd at 3969 ¶ 27.

⁸ See H.R. 4986, 115th Cong. § 703 (2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/4986/text#toc-H2EB9FD492A27431F8CA73C5C451D3C97> (stating that the additional 55 megahertz must be found under 8 GHz and can be licensed or unlicensed).