

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVE IN PART, CONCUR IN PART**

Re: *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177; *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112

As I have often stated, it is of the utmost importance that the Commission release sufficient spectrum resources to develop and deploy next-generation technologies and to maintain the U.S.'s leadership position in wireless technologies. That is why I am so pleased for today's item. I thank the Chairman for his continued efforts to move this proceeding forward, meeting not only his commitment to me to move this item – especially in a summer month starting with the letter "J" – but also for including 26 GHz in the further notice.

Moreover, by resolving the outstanding issues surrounding 24 GHz, we have cleared the final policy hurdles in front of conducting an auction, enabling us to move forward as the Chairman announced. Additionally, we rightfully take steps to bring our consideration of the 37 GHz band to conclusion so that this spectrum can be included in a future auction. In this vein, I am hopeful that we can set a specific timeline for upcoming auctions soon, and that they will include the highly anticipated 37 GHz auction and the remaining 39 GHz licenses. As the Commission considers spectrum opportunities in both the mid- and millimeter wave bands, it is important to provide interested parties with sufficient time to prepare for these auctions.

There are, however, some sections of the item that cause me concern. In particular, I believe that the Commission should have reconsidered its prior decision to adopt non-exclusive sharing in the lower 37 GHz band. A preferable framework would have involved exclusive licensees sharing spectrum with federal incumbents. It would have been commonsense to license these frequencies similarly to the adjacent upper 37 GHz band. But, I recognize that this decision may be influenced by our fellow agencies and, therefore, I will concur to the portions of this item related to the lower 37 GHz band.

My concerns regarding such a sharing paradigm are exemplified in the further notice. In setting up what is now being considered a millimeter wave "innovation" band, the Commission stated that sharing will promote a variety of uses, including both fixed and mobile, and ensure that the band is widely utilized. However, it is quite likely that some of the sharing concepts proffered in the notice will have quite the opposite effect. For instance, I question whether the suggested licensing frameworks will work for mobile services, if first-come-first-served licensing will ensure spectrum is put to its highest and best use, and how federal aeronautical operations in the band will co-exist with wireless operations. I look forward to discussing these and other issues with interested parties.

I am also concerned by the suggestion in the further notice that federal operations could expand in the upper 37 GHz, even if such expansion is limited or on an "as-needed" basis. The federal government needs to reduce its spectrum footprint, not expand it. This is why I have stated, along with Commissioner Rosenworcel, that the value of current federal spectrum holdings should be appropriately quantified. I have gone even further, suggesting imposing agency spectrum fees or permitting agencies the ability to surrender spectrum for budgetary relief to facilitate the reallocation of underused federal spectrum to commercial uses.

Finally, while I fully support not imposing a pre-auction spectrum cap, I am deeply troubled by the portions of the item that discuss post-auction and secondary market case-by-case spectrum

aggregation review. As I stated last year, these spectrum screens should be eliminated. First and foremost, we continue to put more spectrum out into the marketplace. To date, we have made 4950 megahertz of licensed millimeter wave spectrum available;¹ we are also inquiring into the 26 GHz band, which includes more than two gigahertz of spectrum; and, hopefully, we will open other bands that have been teed up, like 32 and 50 GHz.² Altogether, this provides abundant opportunities for those seeking high-band licenses, and, of course, there is also unlicensed spectrum. Additionally, there is still no evidence of the wireless industry ever “warehousing” spectrum, and, in fact, the existence of such “foreclosure” behavior was clearly debunked during the 600 MHz incentive auction experience. I was hoping that we would finally put an end to this charade.

Overall, I thank the Chairman for his leadership on the issue. I approve in part and concur in part.

¹ See *supra* ¶ 33.

² See, e.g., *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8148-52, 8157-58 ¶¶ 386-99, 418-23; *supra* ¶ 94 (stating that “50.4-52.6 GHz band remains under consideration for UMFUS licensing.”).