

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177

In today's item, we encounter two spectrum frontiers bands that will enable expansion of communications services by different industry participants. We resolve the final substantive issue – sharing in the Upper 37 GHz band – standing in the way of the announced 37/39/47 GHz auction. We also adopt rules regarding FSS earth station licensing in the 50 GHz band. The similarities between these bands extend beyond being millimeter wave bands; they both demonstrate the spectrum sharing challenges that the Commission faces as we identify bands for next-generation networks.

While spectrum sharing is a constant topic of conversation, the primary focal point of wireless spectrum policy is – and shall remain – clearing spectrum bands so that they can be auctioned for exclusive use licenses. This is the paradigm that established the U.S. as the leader in spectrum policy and wireless technologies, and there is absolutely no reason to deviate from this course, unless clearing is not possible.

But, I am firmly against efforts to permit sharing in spectrum bands post auction. This item unfortunately does just that by permitting the Department of Defense (DOD) to access spectrum in the Upper 37 GHz band. Make no mistake: this deal is far, far, far from ideal. While this is a sharing model that should never be replicated and should not serve as precedent for future actions, I will reluctantly support today's decision because future federal access in the Upper 37 GHz is clearly limited to DOD, only for operations that cannot be accommodated in the Lower 37 GHz shared band, is restricted to military bases and ranges, and is strictly for defense applications or national security purposes. Further, the Commission can deny a DOD request that causes a significant risk of harmful interference to existing or planned wireless deployments.

I appreciate that, based on concerns I raised, along with my colleagues and relevant industry stakeholders, many of these access criteria were added or clarified from those in the posted draft, such as restricting access to military bases and ranges and giving the FCC a “veto” power. I would have gone further by permitting DOD only a certain number of additional sites in the Upper 37 GHz, or by making the licensee primary, as proposed by some wireless providers. Moreover, I remain concerned that the revised language lacks an appropriate level of specificity as to how many aggregate bases and ranges there actually are, or whether the Commission will really and fully utilize its “veto” power when access to a requested area can be traded for some other Commission priority.

More generally, I am willing to approve this approach on a one-time basis because DOD has stated that requests for access will be very, very rare, and it will provide licensees with the certainty needed to bid and invest in deploying the band. DOD officials must stick to their word. I will swiftly and loudly call out any attempts to backtrack on these assurances. Additionally, as we prepare for the 2019 World Radiocommunication Conference (WRC-19), I expect that all federal agencies will be fully supportive of our efforts regarding mobile operations in the 37 and 39 GHz bands. If there are any problems, I will be the first one at the Chairman's doorstep asking to revisit this issue.

Moving on to the 50 GHz band, I certainly agree with some commenters who question why we are finalizing our rules to permit earth station licensing without considering the corresponding issue of wireless operations in this band. Since this is another instance where there is sharing at issue, it would have been preferable to consider both satellite and wireless uses at the same time. However, as these earth station licensing rules are identical to those in other 5G bands, I will also be supportive of this portion of the item.

That said, I am perplexed as to why certain federal agencies blocked the submission of a proposal for mobile use in 50 GHz to a WRC-19 regional preparation meeting but are silent on the action we take today. These earth stations are likely to point directly at the passive band sensors that they claim to want to protect, and NTIA is actively seeking more stringent protections internationally for earth stations than for wireless networks. It is my understanding that these agencies are willing to give this item a pass because the satellite players are known entities to them and there are relatively few earth stations. Who knew the nation's wireless providers were so incognito? Additionally, the idea that there are so few earth stations is ironic given the push for earth stations in motion, which could lead to putting transmitters on all planes, trains, and other vehicles in many of the identified 5G bands, including this one. Not only must we be vigilant on this ESIMs issue, but we also must continue the interagency discussions on 50 GHz to establish reasonable and data-driven protection criteria for the passive bands, have a solid proposal for WRC-19 that will permit global harmonization of next-generation wireless services in this band, and establish wireless rules and schedule a future auction for these frequencies.

As presented, this is not my preferred item both in terms of content and process, as I would have rather taken some extra time to improve its many imperfections. While this didn't happen, we are left with the choice to support it or not. I choose the former in an attempt to rekindle future efforts for the release of more unencumbered commercial spectrum, including 3.45, 26 and 50 GHz, that our nation's wireless carriers can use to meet the insatiable demands for wireless services now and in the future.