

**STATEMENT OF FCC COMMISSIONER MICHAEL O'RIELLY
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"
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Chairman Wicker, Ranking Member Cantwell, and Members of the Committee: thank you for the opportunity to be here to discuss important matters before the Federal Communications Commission. Having just testified before this Committee last week as part of its review of my nomination for a new term at the Commission, an opportunity for which I was truly grateful, I plan to address further some of the central issues that were raised, as well as others. As always, I am happy to answer any questions that you may have.

Broadband Expansion

At the forefront of my priorities is bringing broadband access to unserved areas as expeditiously as possible. Therefore, I have supported Chairman Pai and the Commission's staff in moving quickly to implement all of the requisite steps that must be taken in advance of the Rural Digital Opportunity Fund (RDOF) auction, including the recent Auction Procedures Public Notice, the upcoming short-form application process, and the limited challenge process that is key in preventing subsidized overbuilding. While this is a tremendous undertaking, the efficiencies and benefits brought about through our competitive reverse auction framework are well worth the effort.

Some have called on the FCC to "accelerate" our already expedited process by enabling certain preferred providers to collect the full reserve prices for their areas and shield themselves from the auction's competitive process. While I have already voiced concerns about the consequences of such a policy, I also question the plan's potential effectiveness in achieving the underlying objective of accelerated deployment. Expediting the auction shouldn't be conflated with expediting the *buildout* of broadband; even if the accelerated long-form process for certain providers were moved up, the Fund's six-year deployment timeline would remain in place. And, while the Commission's buildout timeline could in theory be modified, doing so would, at a minimum, require a notice and comment rulemaking process, which itself takes a substantial amount of time.

If we truly want to find a way to expedite RDOF deployment, one idea suggested by Chairman Wicker would be to provide financial incentives to auction winners to accelerate their broadband deployment obligations, through funding appropriated by Congress. I thank Chairman Wicker for bringing this thoughtful idea to my attention and have committed to working with him and his staff to explore how such a fund could be implemented and administered. After all, I want to connect the unserved areas of our country as quickly as possible—if it were up to me, many of the RDOF's eligible areas would have been auctioned off years ago—and I am open to any good ideas, including this one, to truly help speed up the process.

In thinking beyond Phase I of the RDOF and ensuring that any *future* broadband buildout subsidies are appropriately targeted to those areas most in need, I am also committed to working

with Members of Congress in implementing our obligations under the Broadband DATA Act. I have long been critical of the FCC's reliance on Form 477 Data for purposes of distributing broadband funding, and I applauded the bipartisan efforts that led to the mapping statute being signed into law earlier this year. While I believe RDOF Phase I does not raise those concerns, due to it being limited to those areas lacking service entirely, and is fully consistent with the Broadband DATA Act, I recognize that some of the statute's authors have voiced concerns over plans by the FCC to introduce new funding programs in the absence of reliable and granular maps. Since my primary obligation is to carry out the will of Congress based on the law as written, I have committed to fulfilling our statutory obligation to produce new, accurate coverage maps before moving forward with any new subsidy mechanisms.

Further, in keeping with my commitment to work with Congress on closing gaps in coverage across the country, I appreciate the thoughtful framework announced last week by Congressional leaders to expand and maintain connectivity during the COVID-19 pandemic; remove barriers to deployment; and promote public health, safety, and network security. To the extent further broadband funding is part of a potential future Congressional effort, such as an infrastructure bill, I would also respectfully encourage our nation's legislators to keep certain principles in mind.

First, to ensure precious funding is spent as efficiently as possible, targets those most in need, and does not undermine the investments of ratepayers and the private sector, Congress should include safeguards against wasteful, subsidized overbuilding. I have brought attention to many examples of duplicative spending by other departments and agencies, as well as within the FCC's own Universal Service Fund (USF), and I hope we would learn from the past mistakes that led to these outcomes. At the very least, I would humbly exhort lawmakers to draft statutory language that is as specific as possible and adopt clear requirements for effective coordination among the various departments, agencies, and programs involved in distributing subsidies across the federal government. Second, following principles of technology neutrality is essential: the American people benefit most when we don't foreclose opportunities for innovation and when the market—not the government—picks winning and losing technologies. Third, and finally, consider the FCC as the primary means to allocate new funding, given our agency's successful cost-effective track record and expertise in distributing subsidies.

Spectrum Policy

Moving from wireline policy to wireless, the Commission has also been busy freeing up spectrum resources for next-generation offerings. While the millimeter wave bands should help facilitate 5G in America's largest urban centers, the mid bands will be crucial to providing 5G across all of the country, especially in rural areas. The 350 megahertz of licensed spectrum in both the 3.5 GHz band, which is somewhat limited, and the C-Band between 3.7 and 4.2 GHz is a great start, but much more is needed. Wireless providers are seeking 100 megahertz channels to fulfill the true promise of 5G to consumers. Not to mention, a mid-band pipeline is also needed to ensure we have frequencies available for future innovation over the next decade, to meet the needs of an increasingly mobile-hungry public, and to maintain our position as the global leader in wireless technologies. And, frankly, the future pipeline has effectively run dry, jeopardizing the premier position American wireless innovation has achieved.

An ideal opportunity for future wireless offerings is the 3.1 to 3.55 GHz band, as it is directly below 3.5 GHz and C-Band and could, therefore, provide a large swath of contiguous spectrum that could be quickly deployed utilizing existing equipment due to its proximity to these bands. This spectrum has already been singled out by this Committee, and the requirement to evaluate its reallocation has been enacted into law in the MOBILE NOW Act. This body asked the federal agency holders to study these frequencies to see if they could be made available for commercial use. Ultimately, the upper 100 megahertz (3.45 to 3.55 GHz) needs to be cleared for exclusive-use commercial services. Additionally, a significant slice, beyond the top 100 megahertz, should be cleared for licensed use. And, while it would be ideal for all 450 megahertz to be cleared, I realize that may be unrealistic, so the bulk of the remaining lower portion of the band (e.g., 3.1 to 3.35 GHz) must be studied and allocated for shared use with incumbents.

I have also been an outspoken advocate for identifying spectrum for unlicensed use over many years, especially as an early one to preach for opening the much-needed 6 GHz band for unlicensed use. Following several years of this effort, the FCC recently did so in order to relieve our congested Wi-Fi networks and permit high-speed unlicensed systems that require far greater capacity than is currently available. However, we still need to expand on these efforts by, for example, modifying our 6 GHz technical rules to permit very low power devices in the band, permitting unlicensed use in 5.9 GHz while protecting automobile safety systems, and completing our proceeding to maximize use of TV white spaces, especially in rural America. Further, we need to start looking for the unlicensed bands of the future, such as 7 GHz.

Unfortunately, finding more bands—either licensed or unlicensed—will lead to future clashes with those entities occupying the most ideal mid-band spectrum, especially the Department of Defense. There is already friction, which has been publicly documented, and it is unlikely to subside any time soon. Studies performed to determine whether reallocating spectrum for new uses or sharing will potentially result in harmful interference must be based on reasonable, technical parameters. We need to ensure that spectrum is being maximized and used as efficiently as possible, and overprotecting or hoarding spectrum for incumbents cannot be allowed. We have seen this in our own proceedings, and it was definitely at the forefront of issues leading up to last year's World Radio Conference (WRC).

International Conference Participation and Advocacy

I have been fortunate to have participated in the last two WRCs, along with several preparatory meetings in advance of the conferences. I cannot stress enough that this is a long, resource-intensive process, not only as it relates to formulating our national positions, which have been fraught with conflict, but also in ensuring that we have adequate time to convince other countries that our positions are the correct ones. And, we face a lot of international opposition, as some countries are intentionally trying to block U.S. wireless progress for their own economic gain. Previously, I have argued that an alternative process, akin to the G-7, may be needed to bring like-minded, forward-thinking nations together to work on global harmonization matters. But, I am also committed to working to improve the existing WRC process, so I have begun to look at the steps that we can take to reform our WRC preparations. I want to make it clear that my suggested reforms in no way take away from Chairman Pai's exemplary leadership at WRC-19, nor do they alter the role of the FCC, the State Department, or NTIA. Instead, they serve to highlight the importance of this process and the need to expedite

U.S. deliberations, and to reflect on the difficulties associated with how the system itself is set up. I would like to raise two recommended changes with you, as they would take Congressional action to implement.

First, a temporary ambassador is typically appointed for six months to lead the U.S. delegation at every WRC, but this is simply not enough time to allow the head of the delegation to get caught up on all the issues and advocate effectively when preparations span a four-year period. As background, generally, the ambassador is officially designated five months before the one-month-long conference. While the designee might be employed by the State Department beforehand, it is necessary to have the ambassador in place well before the conference so that they can finalize policy positions, attend the pre-meetings, and advocate for U.S. priorities abroad. I suggest that U.S. interests could be better served by allowing the President to appoint the temporary ambassador up to two years before the WRC. To assist this process, NTIA should be brought into the process by requiring it to provide to the Secretary of State recommendations on potential candidates to assist the administration two and a half years before the conference.

Second, the FCC Chair should be able to select a Commissioner to follow the evolving and controversial international issues closely and designate the Commissioner to attend conferences on his or her behalf. This “International Commissioner” could also help ensure decisions are made expeditiously and keep the other Commissioners apprised of the international landscape. To be clear, this would in no way diminish the Chair’s role, fully preserving the right of the Chair to attend as many international conferences as desired and to be the final voice in expressing Commission policy with regard to international matters. Yet, the Chair has many priorities that compete for time and attention, and the international portfolio is time-consuming and challenging, as it requires following not only the FCC processes and what is going on at NTIA and the State Department, but also the dynamics of every ITU member state and the regional groups.

Digital Taxation

In addition to these international matters, I would also like to take this opportunity to comment on one recurring international policy issue that has yet again come to a head: digital taxation. It is an issue not necessarily within the Commission’s jurisdiction but one that nonetheless has important implications for many regulated entities and the larger communications sector. As recently as May, French officials decided to move forward with their plan to impose discriminatory taxes on the largest, and most successful, U.S. tech firms. The plan is to impose a retroactive, extraterritorial, percentage levy on gross revenues generated from providing “digital interface” and “targeted advertising” services “in France.” Combined, the targeted companies—particularly, Google, Apple, Facebook, and Amazon—account for a significant portion of the world’s current economy, so maybe it is no surprise that a country known for wine, cheese, and other material riches, wonderful as these may be, would take a backward approach to tapping into the digital riches of high-technology industries. Yet, what is even more scandalous is that this plan, which is now part of French law, blatantly attempts to exclude certain French companies involved in other digital markets from these taxes. Such a shameless effort is awful policy under any circumstances, but threatening American innovators during the worst pandemic in several generations is a new low. Many observers, such as Grover Norquist of Americans for Tax Reform, have aptly pointed out the risks of retaliation and an

escalating spiral of regulation as more and more countries seek to tax constituencies that have no political recourse.

Sure enough, last week, the European Union (EU) announced the interest of its countries in “going it alone” to impose digital taxes after the U.S. rejected the state of negotiations and pulled out of talks at the Organization for Economic Cooperation and Development (OECD). Comments by EU officials claim they seek to bring taxation into the 21st century, but, given the dearth of digital technology companies in Europe, such comments are clearly a thin veil covering attempts to slow American progress and penalize our innovators. American entrepreneurship, which sent astronauts into space a few weeks ago, can continue to thrive if the right environment for invention is preserved. Imposing unfair and discriminatory taxes on high-technology companies will result in less innovation. Thankfully, earlier this month, the United States Trade Representative (USTR) announced investigations into digital taxes imposed by certain European countries. I heartily applaud the Administration’s strong efforts to push back appropriately on these unfair taxes and urge this Committee to actively join the fight.

Modifying FCC Marketing & Import Rules

Shifting from international concerns to the plight of domestic companies, I will conclude by discussing policies related to the import of electronic devices. Every stage in the process of bringing new electronic devices to consumers can be difficult and time consuming. Unfortunately, the Commission’s rules can unintentionally make this more onerous than necessary. Specifically, current FCC rules prohibit the pre-sale or conditional sale of radiofrequency devices, except to wholesalers and retailers. In other words, manufacturers must first seek and obtain the requisite equipment authorization from the Commission prior to marketing or selling the next new cell phone or other innovative device. The problem is that companies must expend incredible amounts of time and capital on processing and hardware development to gain approval for products that consumers may ultimately reject. On balance, consumers are harmed because of the lost productivity and investment that cannot be redeployed easily into products that they actually want. Similarly, FCC rules prevent the importation of devices that haven’t yet received FCC equipment authorization. There are exceptions for the very limited importation of devices for trade shows, testing and evaluation, and a few other specific uses, but without the ability to import a sufficient quantity of new products, retailers are prevented from adequately preparing for the launch of marketing campaigns and actual sales of approved devices.

To remedy these issues, I believe that we can make targeted changes in our marketing rules to allow equipment manufacturers to take orders for devices, and obtain financial commitments, before a device has received final Commission approval. This would allow them to gauge consumer interest before devoting extensive time and resources to final production. Market research pales in value compared to actual customers putting their money on the table. Also, this would help determine how many devices will be needed in the near-term to meet consumer demand, preventing both excess and under supply. While small and large manufacturers could gain, consumers will be the ultimate benefactors—and beneficiaries—of additional innovation, especially as 5G and the Internet of Things further expand.

At the same time, a reasonable solution for these import difficulties would be to adopt an exception to the import rules for purposes of device advertising and retail display preparation, similar to other uses that currently have such exemptions. This would give electronic device manufacturers the chance to keep a very limited number of physical devices on hand in retail establishments that clearly couldn't be displayed, used, or sold without completing the FCC device authorization process, but that would be available to sell as soon as final authorization is received.

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In conclusion, I thank the Members of the Committee for your attention and stand ready to answer any questions you may have.