

Statement of FCC Commissioner Michael O’Rielly

**Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives**

**Hearing on
“Oversight of the Federal Communications Commission”
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Thank you for the honor to appear before you today. My thanks to Chairman Blackburn, Ranking Member Doyle, and the members of this Subcommittee for the opportunity to engage with you on many important issues and answer any questions you may have about the decisions and workings of the Federal Communications Commission.

At the outset, I want to congratulate this Subcommittee on the passage of the RAY BAUM’S Act of 2018, which contains thoughtful communications policy reform in several areas. Of particular importance, the provisions confirm the commitment made by many of us in 2012 that broadcasters would be held harmless throughout the broadcast incentive auction repack process. With the additional \$1 billion Congress allocated for this purpose, including \$50 million for affected radio stations, broadcasters are in a much better position to relocate their systems without facing uncompensated expenses. The Commission is currently considering multiple rulemakings to implement the entirety of the related provisions in the law, including one scheduled for our August Open Meeting.

Let me also take this opportunity to applaud Representatives Lance, Tonko, and Collins, along with their 11 cosponsors – many on this subcommittee – for their leadership on the “Preventing Illegal Radio Abuse Through Enforcement Act,” or PIRATE Act. This bill rightfully increases the penalties, requires regular enforcement sweeps, and augments the tools available to the Commission to stop illegal pirate broadcasters. Under Chairman Pai’s leadership the Commission has made tremendous strides in terminating unlawful pirate activity. But, without additional tools provided by Congress, we can only go so far to eliminate the harmful practice of pirate radio.

Additionally, I want to thank Representatives Brooks and Eshoo for introducing the National Non-Emergency Mobile Number Act. This is a commonsense bill that will bring uniformity to wireless short codes used today by states to redirect non-emergency calls on the highway away from 9-1-1 call centers and to state highway patrols. Just as we have one, unified number to call in times of need, it is logical to have one unified wireless short code to call when travelers see car malfunctions or suspected drunk drivers along the highway. This bill is an important first step in eliminating traveler confusion and potentially saving lives.

Finally, I commend Representative Kinzinger for reintroducing the Federal Communications Commission Transparency Act. This legislation codifies the current and critical Commission practice, which I advocated for last Commission and Chairman Pai rightly instituted early in his tenure, of publicly posting items three weeks in advance of their consideration at monthly Commission meetings. As a result of this practice, unnecessary discussions of non-existent issues have been eliminated; conversations are more productive; Commissioners are still speaking their minds and negotiating internally on items; and work product has greatly improved. I have also seen comments from all Commissioner offices — Republicans and Democrats — in favor of the practice. Despite the broad support for this reform, I believe codifying this practice is important to ensure it will continue long after those of us here today depart the Commission.

Federal Broadband Efforts & Potential Pitfalls

The Commission is focused on taking every necessary and appropriate step to provide all Americans the opportunity to access broadband services. According to the last FCC report, at least 14 million Americans do not have access to broadband of sufficient quality to meet our standards. From our subsidy programs to removing deployment barriers to reducing unnecessary regulatory burdens, the Commission is working very hard to address these unserved households.

At the same time, the Commission's efforts should be examined in parallel with programs by other Federal entities. Today, there are three primary Federal agencies that provide funding to aid the private sector expansion or maintenance of broadband offerings: the FCC, the Department of Agriculture's Rural Utility Service (RUS), and the Department of Commerce's National Telecommunications and Information Administration (NTIA). On an annual basis, the Commission provides, from ratepayer collected funds, over \$4.5 billion for the Connect America Fund (CAF) to support direct and measurable broadband buildout in high-cost areas. Further, the Commission has authorized approximately \$6.5 billion for our other three universal service fund (USF) programs that can facilitate the distribution of additional broadband services. Meanwhile, Congress recently allocated, as part of last year's Consolidated Appropriations Act, 2018, an additional \$600 million for a new broadband pilot program, governed by certain conditions, to be administered by RUS. Finally, additional broadband funding is being considered as part of both Senate and House Farm bills.

While efforts to provide RUS with new Federal money are commendable, there is a potential for certain problems to arise. In particular, there is a significant possibility that the RUS program could be used to subsidize areas that already have broadband or fund providers in competition with those that either currently receive FCC subsidies or may have buildout plans that require them to provide service in the future. Additionally, the RUS program could be used to allow providers to serve favored institutions without serving more costly, nearby areas. Either situation could cause enormous financial strain on those existing providers trying to bring broadband to sparsely populated areas.

Risk of harm from RUS spending exists for several reasons. Part of the problem stems from the potential to allow RUS funding to be used for fully served or what some consider underserved areas. Regrettably, "unserved" is essentially defined as an area already having service or multiple broadband providers. Having travelled this great nation, I have met with Americans in truly unserved areas as they

live with zero providers, not one or two existing ones hoping the Federal government will fund another. To accurately reflect this reality, I urge Congress to consider modifying this definition.

Moreover, there is a major disagreement over what should qualify as broadband for purposes of Federal funding. I certainly would like for all Americans to have sufficient broadband speeds for whatever tasks they seek to accomplish. However, there is simply not sufficient funds to subsidize “fiber” broadband builds, either wired or wireless, to every household nationwide, which would cost hundreds of billions of dollars. This is why the Commission has focused its CAF funds on broadband projects with speeds above 10/1 Mbps, and even at that level there is tremendous demand to add additional budgetary resources to reach more households. Although not ideal, the intent is to, at least, ensure every household has this level of service before focusing on increasing speeds further. Allowing the different funding programs to have their own speed requirements greatly increases the likelihood that a tremendous effort will go to overbuilding areas with service today, including areas funded or expected to be funded by the Commission.

Fundamentally, Federal funding should be targeted to addressing those 14 million-plus Americans without any broadband today. Among other ideas, I have advocated having RUS, NTIA, and the Commission coordinate actual implementation of the differing programs. In other words, the program rules need to be written with strict prohibitions on duplication with other existing programs, alignment of speed requirements, and a focus on the truly unserved. Unfortunately, some people see coordination as merely having discussions between bureaucrats. That is not sufficient. While I have little doubt that added dialogue between our three entities could be helpful, it does not solve the standing problem of these programs leading to duplication, wasted spending, or worse. Only the proper direction from the right leadership, such as this Subcommittee, can prevent a bad outcome. As Congress concludes the Farm bill this fall, I hope you will consider these safeguards.

9-1-1 Fee Diversion

I firmly believe that the ongoing problem of 9-1-1 fee diversion by certain states and territories must be addressed. Such diversion has real consequences for the public safety community and the American people. Underfunding Public Service Answering Points (PSAPs) can lead to significant public safety problems, including longer wait times, fewer or overworked personnel, or outdated or inferior equipment to handle the call loads. It can also prevent 9-1-1 call centers from modernizing to NG9-1-1 technologies. At a minimum, allowing states to deceive consumers into paying fees for the 9-1-1 system and transferring the money elsewhere undermines the system's integrity. I thank my colleague, Commissioner Rosenworcel, for working with me to address this issue.

In December, the Commission submitted its ninth annual report to this Committee showing that, in 2016, five states and territories diverted almost \$130 million away from 9-1-1 enhancements and towards other, unrelated purposes. Unfortunately, the FCC must rely on self-reporting by states and territories. This can lead to underreporting or a complete failure to respond altogether. In fact, seven states and territories did just that. It seems some states have figured out that instead of being labelled a diverter, they would rather just be known as a state that didn't submit the necessary paperwork. Take New York, for example, which failed to submit a report in response to the Commission's data collection, but sufficient public record information existed to support a finding that New York diverted "substantial" funds for non-public safety purposes. Moreover, since looking into this matter, my office has uncovered that Puerto Rico and Guam – both of which failed to respond to Commission inquiries – diverted 9-1-1 funds in 2016.

Fortunately, there is some good news to report. It turns out that Illinois, though labeled a diverter in 2016, actually did not divert 9-1-1 funding that year and has certified to my office that it does not plan to divert such funding in the future. Further, New Mexico, one of the largest diverters in 2016, has explained that such diversion was due to a unique situation in which the state faced extreme

insolvency that has since been resolved. New Mexico had not diverted funds prior to 2016 and has explained it will not divert these funds again. Oklahoma also confirmed to me that it did not divert funds in 2016, despite failing to submit initial documents to the Commission. Finally, Puerto Rico, in receiving additional USF support to rebuild its communications networks, has committed to rectify its diversion by the Commission's 2018 report.

But, not every state has been a success story. While initial momentum in Rhode Island was encouraging, the state ultimately doubled down on its diversion practices and simply renamed its 9-1-1 fee. Moreover, in New York and New Jersey, state officials have shown no interest in eliminating this practice. The result? As Representative Collins and I heard in New York, in the last five years Niagara County citizens with a wireless device paid \$10.2 million in 9-1-1 fees, with only \$2.2 million returned to the County PSAP center. Local budgets consisting mostly of property taxes had to make up the shortfall. And, in Guam, state officials appear more interested in debating the legality of their fee diversion than actually recognizing the harm diversion causes to its people and discussing ways to eliminate the practice.

On this note, we must be more aggressive with recalcitrant states, as, for the most part, identifying and shaming such states has not sufficiently worked. That is why I would like to thank Representatives Collins, Eshoo, and Lance for their leadership in introducing the 9-1-1 Fee Integrity Act. In what is an important first step to correcting the problem, this legislation assigns the process to designate acceptable purposes and functions for 9-1-1 funds to the Commission, rather than the states as allowed under current law. This is key, as states like Rhode Island, New York, and New Jersey, and territories like Puerto Rico and Guam, have passed statutes over the years actually requiring the diversion of 9-1-1 funds for non-public safety related purposes. In the case of New Jersey, lawmakers have claimed it will take a constitutional amendment to end the practice. This is absurd and highlights the importance of further Congressional action to bring consistency and clarity to this matter.

Spectrum Policy

The Commission has been hard at work ensuring that sufficient spectrum is available for next-generation wireless services. More than two years ago, I started focusing my attention on the mid bands, after it became apparent that a global shift in spectrum policy had occurred and the world was eyeing these frequencies as a component for 5G deployment. Thus, it became vital for the United States to have a serious mid-band play to complement our spectrum work in the low and high bands.

As you are well aware, there are no greenfield mid-band frequencies available for 5G. The 3.7 to 4.2 GHz band, or C-band downlink, is attractive, however, because it provides significant contiguous spectrum and the largest satellite operators are receptive to reducing their spectrum footprint using a market-based spectrum reallocation approach. The Commission must conclude the proceeding for determining how to reallocate this band promptly given its importance both domestically and internationally for future wireless offerings. In doing so, I believe that any reallocation plan must be completed fairly quickly; release a sufficient amount of spectrum, such as 200 to 300 megahertz or more; and ensure that current users of the C-band satellite services – primarily broadcasters and cable providers – will be accommodated on the remaining C-band, other satellite spectrum, or through different technologies.

This plan must also permit unlicensed use of the C-band uplink spectrum, or 6 GHz band. As Representatives Guthrie and Matsui recently noted to the Commission, the 6 GHz band is a necessary ingredient to address the need for more unlicensed spectrum. While I wanted the Commission to pursue this issue in last month's mid-band spectrum notice of proposed rulemaking, the Chairman assured me that there would be a follow-up item in the fall. This spectrum, along with the potential opening of the 5.9 GHz band and combined with the existing 5 GHz band, will provide the unlicensed

community with access to a significant swath of spectrum, creating wide channels for Gigabit services. Moreover, it will enable us to meet our statutory obligations under the RAY BAUM'S Act of 2018.

The last piece of the mid-band puzzle is permitting additional wireless operations in the frequencies below 3.5 GHz. Fortunately, the review to ensure that the 3.5 GHz licensing structure is attractive to as many users and use cases as possible and the work on the databases that will enable maximum use of 3.5 GHz is wrapping up. We must now turn to 3450-3550 MHz, which NTIA is currently reviewing for reallocation for commercial wireless use. NTIA should complete this work expeditiously and clear this band. But, we also cannot stop at just 100 megahertz. We must look to those frequencies right below 3450 MHz, along with any others that can be put to more efficient use.

To facilitate the reallocation of Federal government spectrum, I have suggested adding appropriate sticks to the current carrot approach contained in law and suggested by others. Besides Congress statutorily requiring agencies to surrender spectrum, which is always challenging, I have proposed establishing agency spectrum fees as a means to reduce the Federal government's spectrum footprint. Basically, if an agency must pay an annual price for its spectrum, impacting its budget, there is an incentive to minimize holdings and only pay for the spectrum used. I can think of few instances in which the Federal government is allowed to commandeer or stranglehold a resource while ignoring any budgetary implications.

Since this view may not garner unanimous approval immediately, another option is to allow agencies to free up spectrum in exchange for budgetary relief. Under this approach, a federal agency could substitute the market value of their surrendered spectrum to offset budgetary limits or cuts or even expand its spending options. As an added benefit, this option could also incentivize agencies, such as the Department of Defense with its remaining statutory budget caps, to modernize their equipment, as the budgetary relief received from the resulting cleared spectrum would cover the cost of the new

equipment and generate a surplus that could be used elsewhere. Basically, it amounts to a spectrum-for-cash swap.

At a minimum, as both Commissioner Rosenworcel and I have stated, there is an opportunity to put a market value on current federal spectrum holdings in order to ensure that they are appropriately quantified. Once implemented, it allows policymakers to make judgments based on an additional factor when considering and reviewing the spectrum holdings of the Federal government. I would argue that any valuations can rely initially on conservative estimates as they will be quickly adjusted over time by market forces.

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I thank the Subcommittee for holding this hearing and look forward to any questions you may have.