Statement of Michael O'Rielly, FCC Commissioner
Before the Subcommittee on Communications and Technology
House Energy and Commerce Committee
"**Oversight of the Federal Communications Commission"**
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Thank you for the honor to be before this Subcommittee to help further its oversight responsibility over the Federal Communications Commission. I'd like to thank the Chairman, the Ranking Member, and all the members of this Subcommittee for the opportunity to engage with you today on any questions or concerns you may have. Since I was last here before you, a lot has happened at the Commission, with a number of bipartisan successes while some things have regrettably stayed the same. My colleagues have highlighted many different elements of the Commission's work this year. I'd like to add a few more thoughts on where we have been and some areas where I think we can make some more progress.

Wireless Spectrum and Infrastructure

One of my main areas of focus this year has been in wireless communications, which as you know is experiencing an era of tremendous growth. To foster innovation, relieve network congestion and provide capacity for next generation products, new spectrum and infrastructure will be equally necessary.

From the Commission's AWS-3 auction to our work on the 3.5 and 5 GHz Bands, we are actively releasing spectrum into the commercial marketplace. And, if all of the pieces are able to fit together properly, the broadcast incentive auction can achieve the desired outcome: release a considerable portion of 600 MHz spectrum for commercial services via auction and expand unlicensed spectrum opportunities, while allowing non-participating broadcasters to stay on air and continue to serve their communities. Although I was disappointed, and in some instances disagreed, in the direction taken regarding a number of components, including market variation, impairments, and reserve licenses, I remain hopeful that the auction ultimately will be a success, whenever it is held. Having worked to help draft the statutory provisions, it is a little self-serving, but appropriate, to commend Congress for such a strong and effective law.

Separately, this Subcommittee has recognized that the United States must push forward – and not rest on our laurels – to create a robust spectrum pipeline. Your substantial bipartisan work on the Spectrum Pipeline Act, included in the recent budget agreement, would open up 30 megahertz of spectrum for commercial use, which would be a big step in the right direction. But according to industry experts, 350 megahertz of licensed spectrum will be needed to keep up with the projected demand by the end of the decade. Inevitably, Federal government users are going to need to reduce their footprint to make this happen, and we need to be thinking about how to incentivize the transition. I have suggested that federal government spectrum user fees should be considered to promote maximum spectrum efficiency, and this can be initiated by this Committee by requiring NTIA to charge Federal spectrum users market rates for spectrum management functions.

The Commission recently moved forward on a notice targeting specific bands above 24 GHz, but more needs to be done to expand our efforts to include additional millimeter wave frequencies. I recently returned from the World Radio Conference where spectrum to facilitate future 5G networks

was one of the main topics of conversation. A measure of thanks is appropriate to Chairman Wheeler for committing to my proposal to examine more bands for potential next-generation deployments by early next summer.

The Commission is also examining the best ways to open the 5.9 GHz Band for unlicensed use, which can be done while protecting automobile safety systems planned for the same frequencies. I greatly appreciate the Subcommittee's efforts to bring all the stakeholders together to work out the logistics. By way of an update, the Commission is initiating testing to facilitate the necessary sharing parameters, while seeking to ensure that any use of this spectrum band by the automobile industry be for safety purposes only.

No matter how much new spectrum is added into the marketplace, the latest innovations and offerings will still not be available to Americans without substantial infrastructure upgrades. As this Subcommittee has recognized, more needs to be done overall to facilitate and accelerate broadband network deployment, and many of the proposals you have put forward would be extremely useful.

A little over a year ago, the Commission took steps in its *Infrastructure Order* to facilitate and reduce obstacles to infrastructure siting. The item excluded from environmental and historic preservation review, certain collocations on buildings and non-tower structures that already host antennas. This exclusion must be expanded to include small cell and DAS equipment that is being installed on any structure, including those with no pre-existing antennas. A particular focus of mine is ensuring the process is completed in the agreed upon timeframe of 18 to 24 months.

Further, the Commission must finish its review and address the problem of "twilight towers." These towers – constructed between March 2001 and March 2005 – were not specifically required to go through historic preservation review process. I know that Commission staff, industry and other stakeholders have been working together to resolve this issue, but it is quite harmful to have more than 4000 underutilized towers remain in regulatory limbo. Providers must be able to collocate on these structures as soon as possible.

The Commission should also work with other federal agencies to promote infrastructure siting on federal lands. This is an issue I spent a great deal of time on in my past, so I understand its importance. Regrettably, the Commission doesn't have a great role when it comes to federal lands, but it is encouraging that this Subcommittee is considering action to address the topic.

Foreign Ownership

The Commission recently moved to reduce barriers to foreign investment in the U.S. communications marketplace, by proposing to extend the streamlined review process already used for common carriers to broadcast licensees. Our procedures for reviewing possible foreign ownership in the broadcast context often require factual showings about investors' nationalities that are difficult or impossible for applicants to make. With many of our international allies permitting much higher levels of foreign investment in their communications companies, we should do whatever we can to multiply potential options for our own broadcasters.

However, fixing the process at the Commission will do nothing to alleviate the problems currently inherent in the opaque, often interminable, "Team Telecom" review process for these transactions. The critical national security analysis provided by Team Telecom can and should occur within a reasonable, timely, and transparent process that is fair to the parties involved, with no potential

of transactions falling into a black hole of uncertainty. Chairman Wheeler and the International Bureau have been working with Team Telecom to spur some improvements, which would be a welcome development. But the only way to accomplish the reforms needed may very well be for Congress to formally establish Team Telecom's structure, role, and process, as it did for CFIUS in the Foreign Investment and National Security Act of 2007.

Process Reform

My efforts to inspire some badly-needed process reforms at the Commission have unfortunately not been fulfilled yet, but this is a crucially important topic that cannot be stressed enough. As I discussed in great detail during my last appearance before this Subcommittee, the Commission has a major transparency problem starting first and foremost with the fact that we routinely adopt items that the public does not get to see and fully understand until days or even weeks after the final vote. Everyone who is interested in something the Commission plans to consider at an Open Meeting should be able to see for themselves exactly what is being contemplated so they can fully engage in the process on a clear and level playing field, not through a dense fog of spin. That this is in any way, shape, or form a controversial statement continues to amaze me. It is my hope that as time moves us further away from the high profile decision of last spring, the blatant unfairness of the current process will be recognized and finally addressed. This is not how we should be doing business.

Other reform ideas I have advocated for, such as posting adopted final rules within 24 hours of an open meeting, standardizing a 48-hour notice rule for items decided under delegated authority, assessing the role of FCC Advisory Committees, establishing a process to terminate dormant proceedings, and many others were summarily deferred en bloc to a Process Review Task Force created during this Subcommittee's oversight hearing in March. My office has been actively engaged in the task force's review process, but suffice it to say for now that no conclusions or actions have been forthcoming.

Mission Creep

I have raised concerns in the past about the potential for mission creep inherent in expansive interpretations of Communications Act used to claim broad authority that could easily encompass activities and parties far beyond the Commission's traditional jurisdiction. I fear that recent moves to proactively investigate and issue warnings to non-carriers on their terms of service are merely the leading edge of things to come as the full implications of several key decisions are finally revealed. From the principles underlying the Paypal, Lyft, and First National Bank enforcement actions, to the regulation of provider advertisements, it is easy to envision a scenario where the FCC would undertake an even broader examination of the business practices of edge providers or online businesses as potentially harmful to the so-called "virtuous cycle" in some unforeseen way.

The Commission's strong interest in regulating privacy and data security practices is another troubling development for anyone who is interested in the tech economy, or indeed, anyone who is interested in any business that transacts with its customers online. As I have pointed out before, our activities on this front run the risk of supplanting or conflicting with well-established FTC privacy and security precedents that are currently serving fairly well as a predictable road map for businesses and consumers alike. Congress has not assigned this role to the FCC, and we should not be taking it upon ourselves to freelance in an area where we have precious little experience or expertise. The Internet is

much too important to our economy to be saddled with experimental regulations from any and all interested agencies.

Conclusion

I appreciate your attention and hope my thoughts and perspective have been helpful. I look forward to answering your questions today and am happy to make myself available at any time in the future to discuss any of these issues in greater detail.