

Additional Questions for the Record to FCC Commissioner Michael O’Rielly

Subcommittee Chairman Marsha Blackburn

- 1. In your testimony you cited the importance of provisions in the Subcommittee's recently passed FCC reauthorization bill that would authorize the Commission place deposits from bidders in spectrum auctions to be sent to the Treasury. Specifically, you testified this measure is "critical" because without it "the Commission currently has no way to comply with the law – and no way to move forward with any large spectrum auction."**

Can you elaborate for the record on the legal and administrative impossibility of moving forward with auctions without a change in the law to allow the Commission to deposit bidder payments directly with the U.S. Treasury?

The unwillingness of financial institutions, including the U.S. Federal Reserve Bank of New York, to accept and hold bidder deposits is a severe problem and I am aware of no legal or administrative options to conduct a spectrum auction without addressing this statutory quirk, as the Commission does not have the authority to supersede the law — even for good cause. This means that no auctions will be held until the law is changed via legislative efforts, including those already before the Subcommittee, such as the “Spectrum Auction Deposit Act” introduced by Representatives Guthrie and Matsui. Congress should expect that no spectrum auction revenues, beyond those that have already been collected, will be forthcoming in the meantime.

- 2. The Subcommittee notes recent changes in the proceeding regarding the Citizens Broadband Radio Service (GN Docket No. 12-354). It appears these changes may increase the value of the spectrum to potential bidders.**

Without legislation authorizing the Commission to place auction bidder deposits directly with the Treasury, can you estimate how much the federal government loses for deficit reduction?

While the Commission is still in the process of seeking comments in response to its recent 3.5 GHz Notice of Proposed Rulemaking (NPRM), it is not unreasonable to assume that a number of proposals made in that document will make it into our final rules. These changes — such as longer licensee terms, license renewal expectancy, auction modifications, and larger geographical license areas — should enhance the value of the band when eventually set for auction. These changes and others will provide prospective auction participants the needed certainty that their investments won’t be stranded and would make this important mid-band spectrum attractive for larger 5G wireless mobile and fixed deployments, thus increasing the overall auction interest and the number of potential bidders. Quantifying any added auction value may be difficult at the time, but it should be in the multiple billions of additional auction receipts.

If the Commission continues to be precluded from holding this auction because of the bidder deposits issue, the Federal government could lose a good percentage of this revenue permanently as potential bidders find other uses for their funds, including purchasing

spectrum licenses on the secondary market. Moreover, delaying this auction could disrupt future auctions for complementary bands the Commission is exploring for commercial use, such as 3.1- 3.55 and 3.7- 4.2 GHz or even the millimeter waves above 24 GHz, causing additional revenue losses.

The Honorable Brett Guthrie

- 1. I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

As you know, the Commission in 1999 allocated the 75 MHz between 5.850 and 5.925 for Digital Short Range Communications (DSRC). While the vision of what DSRC might offer in terms of safety generally seemed meritorious, the pace of technology development has been quite dreadful. During this same time period, a variety of technologies have been developed and deployed in other spectrum bands that replicate uses once envisioned by DSRC. In addition, advances in autonomous vehicles have further called into question the efficacy of DSRC. For these reasons and others, I believe that the Commission should reevaluate whether DSRC will ever be widely deployed and adopted both in automobiles and infrastructure, which are necessities if it is to provide increased overall vehicle safety. If not, the Commission will have to consider whether this highly prized spectrum should be reallocated — not just opened for sharing — for other valuable purposes, including additional unlicensed services. Given these circumstances, it would seem inappropriate to commit at this time to permanently reserving spectrum for DSRC. Moreover, it would be premature to determine that, if DSRC is not continued, the 5.9 GHz band should lay dormant awaiting some unidentified and undefined other ITS safety technology.

- 2. There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you've already been doing to meet their wireless reliability needs?**

All spectrum license holders, including electric utilities, deserve protection from harmful interference as provided for under Commission rules, including vigorous Commission investigations and enforcement actions against any party found in violation of our rules. This is one reason I have spent so much time on the issue of pirate radio “broadcasting” and its impact on licensed AM and FM radio stations. In terms of electric utilities, I would be happy to explore ways to ensure their spectrum license rights are appropriately protected. As part of this, I would want to make sure that we consider technology advances, which are narrowing protections once deemed necessary.

The Honorable Yvette Clarke

- 1. Commissioner O'Rielly, at the Subcommittee's October 25th FCC Oversight hearing, you seemed to testify that rolling back the FCC's Local TV Ownership**

Rules would increase the number of diversely-owned TV stations. I would like to clarify your answers.

As I testified at the Subcommittee's October 25th FCC Oversight hearing, the number of women and African-American owned and controlled TV stations in the United States is abysmally low. In fact, according to the Commission's most recent report on the ownership of commercial broadcast stations, women collectively or individually held a majority of the voting interests in 102 full power commercial TV stations, or 7.4 percent. African Americans fared even worse, holding collectively or individually a majority of the voting interest in 12 full power commercial television stations, or 0.9 percent.¹ It is important to note, however, that this ownership situation resulted under the FCC's archaic media ownership rules, which we took a major step to modernize in November. I believe that updating our rules to reflect the actual marketplace will allow broadcasters to better compete and potentially thrive in the increasingly dynamic marketplace. Congress shared this sentiment when it passed the Telecommunications Act of 1996, which included Section 202(h) that required the Commission to review its rules on broadcast ownership every four years in order to "determine whether any of such rules are necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest."² As I stated at the hearing, the current rules have not worked to promote diversity in media ownership. We ought to try something new.

- a. Do you believe that the Chairman's deregulatory order (FCC-CIRC 1711-06)-as opposed to any new smaller projects you are proposing-will increase the number of women owned and controlled TV stations and the number of African-American owned and controlled TV stations? Please answer yes or no, and then provide a brief explanation.**

Yes. I believe that modernizing the FCC's media ownership rules, as well as eliminating burdensome administrative requirements imposed on both broadcasters and cable operators, will benefit the entire media ecosystem, including diversely-owned and controlled TV stations. These reforms vary from eliminating cross-ownership bans and the "eight voices test" to various rulemakings seeking to dispose of forms regulatees must file at the Commission that do not serve the public interest (or any particularly purpose) and interpreting "written notice" to include electronic notice. One rule we hope to eliminate actually requires broadcasters and cable operators to maintain paper copies of FCC rules. It boggles the mind to think that this requirement is still being imposed on relevant parties. Importantly, the costs imposed by government red tape adversely affect small businesses, which are more likely to be diversely-owned.

- b. If your deregulations do not result in those increases within six months of when they go into effect, will you commit to reversing these deregulatory policies at that time?**

No. Under the Commission's prior regulations, the number of diversely-owned and

¹ FCC, Media Bureau, Third FCC Form 323 Report on Ownership of Commercial Broadcast Stations as of October 1, 2015 (2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344821A1.pdf.

² Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

controlled TV stations did not meaningfully increase. This includes rules like the Newspaper-Broadcast Cross Ownership Rule that has been in place since the 1970s. After more than four decades of rules that did not work to promote localism, competition, or viewpoint diversity, I believe we should give a deregulatory approach a sufficient chance.