

**TESTIMONY OF FCC COMMISSIONER MICHAEL O'RIELLY
BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
"REVIEW OF THE FY2018 BUDGET REQUEST FOR THE FEDERAL COMMUNICATIONS COMMISSION"
JUNE 20, 2017**

Chairman Capito, Ranking Member Coons, and Members of the Subcommittee, thank you for the opportunity to appear before you to discuss the Fiscal Year 2018 budget request for the Federal Communications Commission and other matters.

I. Budget Request & Priorities

I applaud FCC Chairman Pai for preparing the budget request presently before the Subcommittee. Due to a timing quirk, I didn't vote in favor of it. Because the original version of the request was prepared in early 2016 under the previous chairman and contained a substantial increase in spending, essentially reversing the prior year's reductions, I withheld my support. Since then, improvements were made by Chairman Pai over the last few months and the document now reflects a direction that I can generally support.

In particular, I appreciate the Chairman's effort to trim the budget in terms of overall funding and personnel compared to the FY2017 budget submission and final appropriations levels. While these are difficult decisions to make I'm sure, changes as those outlined in the submission can be made without undermining the ability of the Commission to execute its mission. It is not unreasonable to reduce spending by 5.2 percent and personnel by 6.6 percent, as compared to last year (and I trust that the personnel reduction can be maintained notwithstanding the fact that the hiring freeze has been lifted).

If I could suggest one area where additional resources may be justified, it would be support for further work on the Commission's universal service fund (USF) within the Wireline Competition Bureau. Many vital projects to expand broadband to unserved communities come from the individuals that oversee these issues and yet the total number of staff working on them is surprisingly small. Affected industry are stunned to learn that only a dozen or so people are working on the High-Cost program, a critical part of our nearly \$9 billion fund. Wireline certainly qualifies as one of the Commission's workhorse bureaus, and it has been noticed that necessary changes to our programs have been put on hold for lack of resources. However, I believe that this issue can be addressed through reallocating resources within the agency, thereby avoiding increases in overall personnel.

USAC Difficulties – While I previously suspected that there were questionable practices and poor management occurring within the Universal Service Administrative Company (USAC) (the quasi-private company the FCC uses to oversee its USF programs), it has recently been brought to the Commission's attention that USAC has been plagued by a number of significant problems preventing the efficient distribution of funding contributed by hard-working Americans. It should be clear that Chairman Pai inherited this situation and has been steadfast in trying to right the ship. However, the Subcommittee should be aware that more problems are likely to be unearthed in the near future. This may force the Commission to revisit every aspect of USAC, including possibly putting the functions out for competitive bid, which would be my preference. This development does not diminish my belief that the Commission's High-Cost program is on reasonably strong footing, especially compared to other agencies' broadband programs or any new mechanism that could be created to distribute funding.

Spectrum License Fees – In terms of policy recommendations included in the budget, I do not support the imposition of spectrum license fees on private, commercial entities. The fundamental purpose of spectrum auctions is to efficiently allocate licenses, not raise revenue. Thus, trying to enact a fee to simulate auction value is not sound spectrum policy. To make those holding licenses obtained outside of the auction process pay additional fees now would result in increased costs on consumers and impact providers' ability to offer service. Similarly, market forces and other commercial spectrum users put constant pressure on commercial license holders to be spectrum efficient. Moreover, in most instances, licensees have paid for the spectrum in the secondary market when licenses were sold or swapped.

I have, however, advocated that the Congress consider imposing Agency Spectrum Fees on those Federal government agencies that hold spectrum. By establishing an opportunity cost, agencies would be forced to be more spectrum efficient and maintain only those frequencies needed to meet their respective missions. In today's structure, agencies face no penalty for letting spectrum remain fallow and there is only so much pressure that can be applied to agencies to become spectrum efficient.

FCC Move – While it appears that the decision to relocate the Commission headquarters is final, I do think it is necessary to note that the move will have a negative impact on the agency. For instance, I know that several seasoned agency professionals will choose to leave the Commission rather than transfer to the new location, which seems to be full of logistical nightmares, including the inability to easily access the site by major roads or metro. The loss of productivity from staff departures and lack of individual office space may not be noticeable immediately, but it will be felt over time.

II. Commission Structure & Operations

While the communications and technology industries serve as a vibrant job creator and economic productivity generator, their regulatory overseer needs a serious upgrade. The Commission's structure consists of outdated bureaus and divisions based on bygone eras. Routinely criticized, the Commission maintains regulatory silos based on transmission mechanisms that pre-date the invention of the Internet and the radical convergence that has occurred since then. Just consider that one of the Commission's top priorities, broadband availability, is overseen by at least three different bureaus depending on the underlying technology used (e.g., fiber, mobile or satellite). Also, note that the Media Bureau governs our intervention in over-the-top video offerings, VoIP is done by the Wireline Competition Bureau, and yet both are mere Internet applications, which the Commission arguably doesn't have authority to regulate. Then, there is the fact that the Enforcement Bureau is essentially duplicating functions that should be reserved for the policy bureaus. And the agency's 60 or so economists are scattered throughout the building, effectively preventing coordination or synergies.

The last major Commission reorganization was the creation of new Public Safety Bureau in the mid-2000s, which is hard to consider a real modernization effort. Shouldn't the communications and technology industries, which are constantly facing dynamic changes, have a regulator that reflects such a marketplace?

Accordingly, I would humbly suggest that this Subcommittee consider requesting the Commission to prepare transformative plans for the agency's structure. The preparation of such plans would complement the work of Chairman Pai to improve the Commission's operating procedures and create a new Office of Economics and Data. Notwithstanding the good work of the Chairman to date, only

Congress can sufficiently direct the Commission to conduct the requisite work to generate a blueprint for a modern FCC organizational structure.

III. Policy Matters

While this hearing is focused on the Commission's FY2018 budget, it seems appropriate to raise a couple of key policy matters before the Commission for purposes of updating the Subcommittee.

Broadband Availability & USF – As mentioned, it is a top Commission priority to make broadband available to as many Americans as possible. In addition to the two USF reform items discussed in the budget, the Commission also completed reform of our rate-of-return regulations last year in order to allow standalone broadband offerings, while also bringing other necessary improvements forward. This bi-partisan effort – supported then and still now by the affected industry – will allocate just over \$2 billion over the next ten years for rate-of-return carriers so they can expand their networks and economically bring service to consumers. Additionally, I would be remiss if I didn't mention my perpetual project to finally act on the Remote Areas Fund, or RAF. These are the hardest to serve portions of America and the Commission has generally ignored them for that reason. Hopefully, in the very near future, we will be able to finally make funding available and select providers willing to serve these areas.

Infrastructure Deployment – Part and parcel to reforming our subsidy mechanisms, the Commission is reviewing and preparing to remove the major barriers to broadband deployment imposed by state, local and tribal governments. Quite simply, these entities, by their actions, and inactions in some cases, are standing in the way of Americans getting affordable broadband connections. For instance, just a few weeks ago, I was in New Orleans, Louisiana inspecting the installation of small cell systems to bring faster wireless broadband to its citizens. Unfortunately, the city and the local energy company, Entergy, were involved in a sad game of finger pointing and foot dragging that prevents Southern Light, a regional installation specialist and broadband expert, from getting electrical power to the site equipment. This means that a major wireless carrier is unable to double or triple wireless download speeds in some of the less affluent neighborhoods. Such activities that delay and deny network builds, including excessive fees and official and de facto siting moratoria, are being replicated throughout our nation and cannot be allowed to continue if we are to ever make broadband availability as ubiquitous as possible.

911 Fee Diversion – Despite best efforts over the years trying to coax and cajole states not to divert necessary fees collected for 9-1-1 purposes, the Commission identified that, in 2016, eight states and a U.S. territory continue the practice, and it did so via self-reporting, meaning the issue may be even more acute. Make no mistake about this: states are either misleading their citizens about where any "extra funds" are going or, worse yet, shortchanging their 9-1-1 system operations from having the resources to function optimally. At the same time, these budgetary shenanigans highlight why many states are ill-prepared to migrate their systems to the next generation of 9-1-1 systems (or NG-911). While I have previously outlined a few possible ways for the Commission to push states to stop this behavior, this Committee maintains the ability to condition billions of dollars in grants and funding provided to states, which could serve as a great course corrector on the subject.

Pirate Radio – One of the Commission's fundamental obligations is to issue licenses for the use of the radio spectrum and ensure that licensees' offerings are protected from harmful interference. Unfortunately, for many reasons, the Commission has allowed individuals to illegally set up shop in the

middle of the radio bands, causing immediate and lasting harm to existing legitimate broadcasters and the American public. More specifically, in at least four markets (New York City, Miami, Boston and parts of New Jersey), these hooligans deprive broadcasters of ad revenue and listeners and keep emergency messages from being heard. Thankfully, the Commission is preparing to take a different tack toward these illegal operators, but the Subcommittee's endorsement would be welcome as we set forth to end this practice.

Thank you for the opportunity to be before the Subcommittee today and I look forward to answering any questions that Members may have.