

**Remarks of Michael O’Rielly, FCC Commissioner  
Before the National Association of Broadcasters’ State Leadership Conference  
February 23, 2016**

Thank you for the opportunity to be before you this afternoon. As a minority Commissioner, I am happy to participate in events such as these whenever invited to do so. I am reminded of the Oscar Wilde quote, “Nothing annoys people so much as not receiving invitations.” The broadcasting community, however, has been kind enough to extend such invitations on numerous occasions during my time at the FCC. Just a few weeks ago, I had the pleasure of meeting many wonderful broadcasters at the Country Radio Seminar and, shortly before that, at the NAB Radio Show in Atlanta. Many of you have even welcomed me for friendly discussions and in-depth tours of your stations during my travels around the country. And all of these visits have been excellent learning opportunities for me, as well as providing a chance to make friends with some really great people. So I’m glad to know that I haven’t worn out my welcome just yet.

I would like to start with a simple recognition about the importance of broadcasting: you play a vital part in educating, entertaining, informing and serving the American people. The product of your livelihoods is ingrained into the fabric of our society, and people tie the memories of their lives to the programming you bring into their homes. Your on-air talent become like family, and your charity efforts go unmatched in your communities. While many of you already know this, I would like to acknowledge and thank you for your efforts.

With change being the only real certainty for 2017, there’s a flurry of activity in Washington, and the Commission is no exception. And I’m sure your diligent NAB folks are keeping you abreast of the many issues on our agenda that affect broadcasters in one form or another. If you will indulge me a bit, I’d like to discuss some issues that may be important for those in television, those in radio, and those that operate both.

*Incentive Auction*

I suspect that a primary interest of many television broadcasters in each of your states is the upcoming broadcast spectrum incentive auction. As it stands now, the Commission is expected to “begin the auction” on March 29, or 35 days from today. Chairman Wheeler seems committed to this timeframe and, watching him as I have, I doubt either he or the auction team will be inclined to move this date. The only thing that I see having any potential to disrupt this timeline is an official and substantiated request from a significant party that, absent a delay, a successful auction could be in jeopardy. It is also possible that a decision by a court could waylay the timing, but that seems like a heavy lift at this point. Accordingly, given all of the steps required to initiate the process and reach conclusion, the Commission is likely to be in the midst of this auction for most of the summer and perhaps into the fall.

You should know that I am rooting for success. I say a little prayer each day that the auction be exceptionally bountiful to participating broadcasters and that it will release a significant amount of spectrum into the marketplace to meet the future demands for wireless data services. That said, I do have concerns about some of the auction specifics, which led me to dissent on a number of Commission items. For instance, I worry that the reserve, or spectrum set-aside, is going to help companies that don’t need or deserve the government’s assistance. By what measure does it seem fair to allow well-

established and well-financed companies, such as Comcast,<sup>1</sup> to be reserve participants? I won't blame Comcast one bit if they choose to pursue reserve licenses, as they have a fiduciary responsibility to shareholders. But should the Commission really give a preference or subsidy to a sufficiently capitalized, major market participant that is listed in the top 50 of the Fortune 500 list?<sup>2</sup> What about if rumors are true that a multibillion dollar hedge fund will enter seeking to flip licenses in the future? How philanthropic of the American people to bestow such benefits. And every dollar that is spent on the reserve, rather than through a completely open and fair auction, will depress the ultimate value of broadcast stations for participating and non-participating broadcasters.

In addition to its prior advocacy on the topic, the NAB has appropriately raised a couple of key issues pertaining to the auction's aftermath. Specifically, deep concerns have been voiced over whether 39 months is sufficient to repack remaining broadcasters and the sufficiency of the overall budget of \$1.75 billion. In my opinion, these concerns are unlikely to be considered and addressed until the Commission and Congress can examine the lay of the land post auction. That does not mean each of these issues is not important. I am only suggesting that better data and analysis will be necessary before making premature judgements. For instance, I have requested information on the number of available tower crews to perform the repack. Such information, which I have been unable to obtain, along with the exact number of stations to be moved, will be necessary to determine an accurate timeline. You have my commitment to be open minded and proactive on these issues, including expressing support to Congress for additional funding, if absolutely necessary.

#### *Online Public File and Correspondence File*

Just a few weeks ago, the Commission adopted new rules to transition the public inspection files maintained by radio stations, cable operators, and satellite systems to an online format. TV stations already made this transition starting in 2012, and I hope this next step can be a relatively painless process for those who will now be making the switch. Though perhaps this change was not on your wish list, I really appreciate your willingness to engage with the Commission and provide helpful feedback along the way to get to an outcome most can accept, even if begrudgingly. Online filing does have the potential to make it easier for broadcasters to maintain the necessary records, while giving the public better access to information. It makes little sense in 2016 to keep this information in paper files for many reasons, including possible targets for sabotage by someone with an ax to grind against a station or owner.

In order to realize the full potential of this transition we need to make sure broadcasters can actually *make* a full transition. If the records are online, there should be no more need to make a physical paper file available to anyone who walks into a station. The old system subjected station personnel to a real security vulnerability that had to be tolerated in the name of transparency. But with an online filing system, we can and should fix this problem.

The last remaining barrier to a true online public file for broadcasters is dealing with the correspondence file, which arguably can't be put online due to the private, personal consumer information it may contain. A sticky problem to be sure, but at my request the Chairman has agreed to open a new proceeding to consider eliminating the outdated correspondence file requirements completely. Your

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<sup>1</sup> See, e.g., Thomas Gryta & Shalini Ramachandran, *Comcast to Jump into Airwaves Auction*, Wall St. J. (Feb. 3, 2016), <http://www.wsj.com/articles/comcast-to-jump-into-airwaves-auction-1454530358>.

<sup>2</sup> Fortune, Fortune 500, <http://fortune.com/fortune500/> (last visited Feb. 22, 2016).

active participation would be very helpful in moving this final step of the online public file effort, swiftly and decisively.

### *Pirate Radio*

Many of you have been working hard to refocus FCC enforcement priorities on pirate radio operators, and I am happy to be able to say that your efforts are starting to pay off. Pirate radio may not be a top concern in some of your communities at least for now, but it's expanding at an alarming rate, eating away both at legitimate stations and the principle that *all* licensed spectrum must be protected, regardless of who is interfering, or why. It is the FCC's responsibility to confront and defeat this attack on our airwaves, under no uncertain terms.

We need to ramp up real-life enforcement activity in the field, period. Given the lack of focus shown in this area in recent years, some would agree with the great philosopher, Toby Keith, that what is needed is "A Little Less Talk and a Lot More Action," and I would be sympathetic to this view, although I suspect the song is focused on another topic. I also believe the fight to eliminate pirate radio can and should be fought on every available level or avenue. Along with more NALs, a concurrent outreach and education effort could be a real game changer in the fight against pirate radio. Legitimate companies and associations want nothing to do with facilitating illegal activities, but they may not be aware of the pervasiveness of this problem, the damage being done to consumers and legitimate broadcasters, the sophistication of some modern pirate operators, or the seriousness of the potential consequences. So, I have been working with the Chairman, my colleagues, and the Enforcement Bureau to clearly outline the Commission's pirate radio policies and enforcement goals in an advisory document that we will use to spread the word to building owners, advertisers, political campaigns, concert promoters, venue operators, and others that may be unknowingly enabling pirate operators. Be on the lookout for the results of this effort.

Meanwhile, the leadership of members of Congress like Ranking Member Frank Pallone continues to prove invaluable in the push to keep pirate radio on the front burner at the FCC and elsewhere in DC. As many of you do, I very much appreciate his thoughtful and creative approach on this issue. I look forward to continuing the conversation with him and other Hill leaders and sharing my thoughts if I can be of assistance in any way with his commendable efforts to attack the pirate problem from other angles.

### *Other Issues of Importance*

Now we come to the part where I seek your assistance. The Commission needs your thoughts and input on ways to reduce specific burdens imposed on your industry that are no longer necessary or relevant in the current market environment. To argue that you should be weighed down by regulations that are past their prime, raise your costs, and keep you from adapting to the future is wrong and unwarranted. I've asked this of broadcasters before but the response has been somewhat underwhelming. So today, I'm challenging the state associations to bring forward a top ten list of small-to-medium range items to modernize Commission regulations of your industry. Work collectively with other states or individually, but please don't sweep this golden opportunity aside. How often do you have one of the five FCC Commissioners ask how to make your life easier?

Turning to a slightly different topic, let me take this opportunity to thank the broadcasting community for all it does to bring news and information to the American people. From responding to blizzards in

Buffalo and Washington, D.C., to human impact stories in Atlanta and Raleigh, I have personally seen how local news teams provide critical and insightful information to the public day in and day out. But there is always room for improvement, and I think it's appropriate to ask each of you to consider ways to advance the content of news programming that you offer today. To be clear, the Commission generally should not be involved in the business of news. Instead, I respectfully request that you examine every aspect of your news offerings to see if and where improvements can be made. If you haven't already done so recently, this is a good point in time to challenge yourselves and your teams to offer your communities the best news product possible.

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Thank you so very much for having me here today. In closing, I hope to have discussed an issue or two of interest to you or the broadcasting members of your state. The real value to me from state broadcasters visiting D.C., however, is not hearing my own voice, but the chance to hear your concerns directly. So, we set aside some time for questions. Knowing that broadcasters are generally not the bashful types, I am ready to respond to your thoughts or issues to best of my ability and look forward to seeing many of you at the Commission in the coming days.