

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands, File No. 0006670613, File No. 0006670667, Report No. AUC-97AUC.*

The order before us methodically details the myriad of agreements entered into by DISH and the two small businesses, SNR Wireless LicenseCo, LLC and Northstar Wireless, LLC (“DISH DEs”), it created solely for the purpose of obtaining licenses at a discount in the recent AWS-3 auction (Auction 97). It also describes the strategic bidding strategy employed not only by the DISH DEs but also DISH’s wholly-owned subsidiary, American AWS-3 Wireless I LLC. Between the agreements and the actual demonstration of control evidenced by the bidding activity, the item provides sufficient evidence and analysis to find that, under our designated entity (“DE”) rules, DISH controls these two entities and, therefore, DISH’s revenues must be attributed to the DEs disqualifying them for small business benefits.

I vote in support of this decision as it is consistent not only with Commission rules, but also with congressional intent. Specifically, Congress mandated that the Commission implement rules to “ensure that small business . . . are given the opportunity to participate in the provision of spectrum-based services.”<sup>1</sup> On the other hand, Congress also recognized the importance of preventing unjust enrichment.<sup>2</sup> It was clearly Congress’s will to provide small business benefits, such as bidding credits, to eligible entities to promote such goals as competition, avoidance of excessive concentration of licenses and the wide dissemination of licenses,<sup>3</sup> while preventing large, well-financed companies from improperly profiting from a subsidy program and inappropriately extracting a benefit provided by Americans.

I am not sure I agree, however, with the decision that this matter should not be referred to the Department of Justice, but in the interest of obtaining finality in this case, I will not object to this portion of the item. Notwithstanding the disclosures made by DISH and its two DE partners, parties to any DE arrangement, as well as anyone involved in the Commission’s auction process, are prohibited from violating our nation’s antitrust laws. In this instance, an analysis of the record seems to provide sufficient evidence that the parties may have colluded or attempted to do so in order to make strategic bidding decisions in an anti-competitive manner. This is not and cannot be cured by Commission’s disclosure process. As such, I would have preferred that we refer this matter to the Department of Justice, which is the subject matter expert regarding antitrust, and allow it to make its own judgement regarding whether or not the facts presented are worthy of further investigation. This would certainly be superior to the Commission undertaking its own analyses to come to the conclusion that the alleging party “failed to demonstrate that [DISH and the DISH DEs] conspired to violate the antitrust laws.”

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<sup>1</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>2</sup> *Id.* §§ 309(j)(4)(E), 309(j)(3)(C).

<sup>3</sup> *Id.* § 309(j)(3)(B).