

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
CONCURRING IN PART, DISSENTING IN PART**

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*,
GN Docket No. 12-268.

In this item, the Commission seeks to clarify which out-of-core Class A eligible low-power television (LPTV) stations would obtain protection in the Incentive Auction repacking process. As a starting point, the statute states that a LPTV station is afforded protection only if it “has been accorded primary status as a Class A television licensee.” Therefore, Class A stations licensed and LPTV stations with pending applications on file for a Class A license, as of the date of the enactment of the Spectrum Act, February 22, 2012, would be eligible. Unfortunately, the Commission’s Incentive Auction Order protected one out-of-core station using the rationale that it had made continuous efforts to obtain an in-core Class A license and that it missed the requisite application date by two days, among others. Based on the protection of this one station, the exemption was expanded, on reconsideration, to a protected class covering those that also had an application for a Class A construction permit either on file or granted as of the date. Now, the Commission seeks to contract the class by excluding an entity whose Class A construction permit had been granted, but subsequently expired, prior to the February 22, 2012 deadline.

Adding to this difficulty, staff public notices had previously designated this particular station for protection, but, upon further reflection, it appears that this was a mistake. All of this is highly unfortunate and regrettable. Not only does it appear as if the station took certain actions based on potentially inaccurate information from staff and relied on protection in making certain business decisions, but also – and more importantly from a policy perspective – this was all preventable.

From the very beginning, I have expressed serious concerns to staff about making discretionary decisions, along with my view that none of these stations should have received protection in the first place. Had we set a firm, no exception policy that only those out-of-core LPTV stations with Class A license applications pending would get relief, we would have never been in this position. This view is consistent with the statute. Therefore, I concur with the decision to exclude the stations as outlined in this item and dissent in part because I cannot agree with this process whereby the Commission continues to inappropriately draw and move lines regarding entities receiving discretionary protection, when, in fact, the preferable approach would be to start from scratch, eliminate all preferences, and exclude those not protected by the statute.