

Remarks of Commissioner Michael O’Rielly before the 2015 NAB Show
Panel Entitled: “The FCC’s Incentive Auction: Makes Solving a Rubik’s Cube Seem Easy”
April 13, 2015

Thank you for that warm introduction and for having me here today. The FCC Commissioners must have really bored you last year given that the traditional panel structure has been discarded and replaced by speeches. What has the world come to if me delivering a speech is a preferable option? I joke.

The title of this segment is a bit of a playful spin on a very serious topic. Alas, it is not that far off base. The Commission’s role, as charged by Congress, is to align all of the pieces in the correct three-dimensional order to meet an overall objective. Having never been one to “solve” a Rubik’s Cube, I hope to do a better job at ensuring the broadcast incentive auction is a success, which is one of my main goals as a Commissioner. Establishing the framework for this auction – the first ever attempted – is a daunting task, especially given the added complexity and speed of some of the Commission’s decisions so far and the expedited timeframe as pushed by some.

I would argue that one of the most productive steps we can take is to simplify the overall process. For my purposes, it means immediately dropping some of the more controversial components – such as dynamic reserve pricing – that broadcasters and others have repeatedly raised as problematic and detrimental to all participants. We must remain focused on the goal: to conduct and complete a successful auction, not win a Nobel Prize for most intricate auction design.

Let’s start with a quick lay of the land. As it currently stands, the Chairman has declared that the auction will begin in the first quarter of calendar year 2016. Before we can get to that point, a number of individual items and responses to any reconsideration petitions need to be completed, as well as concluding any legal and procedural challenges. Specifically, the Commission will have to consider issues raised in seven incentive auction-related items: the wireless microphones NPRM, unlicensed/Part 15 NPRM, LPTV/translator NPRM, inter-service interference NPRM, commence operations PN, designated entity NPRM, and vacant channel NPRM, and the last of these hasn’t been released yet. In addition, the Commission needs to adopt and release an Auction Procedures Public Notice. On top of this, the Commission must test and retest the software that will be used and conduct extensive educational outreach on the auction software and the bidding process. And we have to do all of this in a mere 8 ½ to 10 ½ months from now.

Those are the technical items that must be completed, but there are also large financial considerations that are relevant and critical. The best auction structure in the world cannot overcome a failure of existing TV broadcasters and wireless providers to show up and partake in the auction. And the egg will be on the Commission’s face if we fail to get this right.

Given this reality, I have deep concerns about certain policy decisions being made that could depress participation and/or revenues. In particular, I worry that the information and hype about the potential proceeds may lead to broadcasters pricing themselves out of the auction. I also worry that the impediments placed on wireless providers will prevent a free and open bidding process, thereby lowering revenues from the forward auction portion. Simply put, if there is a gap between expectations to sell and willingness to pay, the auction will fail.

To clear a significant amount of spectrum, the Commission will need to purchase a particular number of stations in strategic locations. By some estimates, in order to clear 84 MHz, which is not an

unreasonable target, approximately 200 full power stations will have to be purchased. These stations are generally located around the borders and then extend to cover some of the largest U.S. cities. For instance, one area runs eastward from Detroit through New York and down the East Coast, another covers southern California and goes across Texas. For broadcasters located in these areas, there is a chance that you may be holding a valuable asset, but everyone needs to be careful not to overestimate how valuable.

Not surprisingly, the recent success of the AWS-3 auction may have inflated the overall expectation as to the money that will be available for broadcast licenses. It is unclear, however, how comparable that auction is to the incentive auction. In the AWS-3 scenario, wireless providers knew the exact licenses being purchased and the applicable rules. However, the incentive auction rules are still unsettled. Therefore, interested parties may have spent more in the AWS-3 auction, seeing it as a safer bet. And, in fact, a number of important variables will remain unknown until bidders are in the midst of the incentive auction. Moreover, questions have been raised regarding the activity of some designated entities, which could have inflated the recent auction results. On the other hand, given the propagation characteristics, the 600 MHz spectrum could be more valuable than the AWS-3 licenses. Just like a lot of things, the value of spectrum is only what someone is willing to pay for it, and that gets me to my next point.

It is in everyone's best interest – especially broadcasters that may be interested in selling – to get as many wireless companies as possible to participate in the forward auction. Broadcasters should actively follow the Commission's proceedings to pointedly critique any proposals that may detract from wireless license value. Unfortunately, the Commission has diverged from the sound principles of maximizing participation to serve other goals. In particular, the Commission seems intent on setting aside some spectrum – in other words, reserving licenses – for select companies. The practical effect of this policy is obvious: these licenses will go for far less, because the country's largest providers will only be able to win the unreserved spectrum. To see an example of this policy in action, we only have to look to the recent Canadian AWS-3 auction where the reserved spectrum winners paid 4.68 percent of the total auction receipts, less than what was paid for unreserved spectrum by a factor of 20.

Additionally, if most of the auction revenues will come from the unreserved spectrum, then the Commission needs to ensure that those licenses are sufficiently attractive and unencumbered. Instead, the Commission's latest proposal is to keep the most desirable licenses for the reserved category, while offering our nation's largest wireless companies licenses that are impaired, which means they suffer from interference problems. For broadcasters seeking to maximize the value of their licenses, which affects not only those that participate but future valuations of remaining stations, such a policy would seem to be troubling and well worth your effort to see changed.

On that note, let me take this opportunity to challenge broadcasters and anyone else listening to consider a new approach, a change of emphasis if you will, in your interactions with the Commission. Time marches on at a breakneck pace in the media landscape, but the dynamic changes it brings to the broadcasting industry are often not reflected in changes to your regulatory burdens. For example, if the Commission is going to proceed forward with shifting the public file obligations to an online model, it only seems appropriate that some reciprocal reduction of required access to broadcasters' physical office space should be considered. And when it comes to media ownership rules, allowing more access to capital through foreign investment, or even something as simple as online recruiting efforts, the Commission has to make similar adjustments to reflect market realities.

In my time at the Commission, I have put forward a number of ideas to empower broadcasters to help solve problems, address market changes, and lower cost of operations. And I would like to see if this modern approach and viewpoint couldn't be adopted across-the-board by broadcasters. To be clear, any regulatory relief provided to another media sector should be welcomed, rather than attacked, and seen as an opportunity to move the dialogue toward reducing the burdens for broadcasters as well. In other words, rather than fighting to impose more burdens on your neighbor, focus on efforts to reduce them on yourself. And this applies equally to other Commission-regulated industries, not just broadcasters.

Too often it seems that the concept of regulatory parity is used to justify a push for new burdens on other media. But I would love to see the momentum shift toward initiatives to liberate this venerable, historic industry from the old paradigms. Let me make a comparison: in previous days of a monopoly telephone world, we expected AT&T as part of its service obligation to conduct extensive research, and it did so by building Bell Labs into a world renowned research institution. As the marketplace became more competitive, AT&T's relationship with Bell Labs changed and eventually it was severed. Let me suggest that in the ultracompetitive 2015 media landscape, broadcasting may be at, or past, that inflection point.

I greatly appreciate the opportunity to share my thoughts with you, and look forward to hearing more from this distinguished panel. And maybe someone else up here can tell us the secrets of the Rubik's cube as well.