

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND CONCURRING IN PART**

Re: *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191.

I approve the initiation of this Notice of Inquiry to enable us to meet our obligation to report to Congress on whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. I am troubled, however, that the NOI is not designed to provide an honest assessment of broadband deployment in the U.S.

As I expected, the Notice proposes to retain the current 25/3 benchmark. After all, there's no reason to increase a benchmark that was irrationally set just seven months ago. For instance, while I have no bias against and openly acknowledge the benefits of the adoption of 4K TV, the vast majority of consumers still haven't purchased such sets, which was a key driver in the Commission's rationale for selecting 25/3 in the first place.¹

But make no mistake: I suspect that the measuring stick will be adjusted again if necessary to ensure a negative finding. In the last Report, the Commission previewed that "the day may be fast approaching" when a positive finding will require the availability of both fixed and mobile broadband at their respective benchmarks. Given the emphasis on mobile broadband in this Notice, that day appears to be exactly 180 days from now.

I continue to be disturbed by the notion and actions to treat fixed and mobile broadband differently in this context. As I previously mentioned, the Commission went out of its way – wrongly, I believe – to declare them as the same for purposes of our misguided Net Neutrality Order. Yet here, we are doing the opposite, similarly wrong once again.

The general reason that fixed and mobile broadband are used for different purposes by consumers today is because of current speed limitations from mobile broadband technology. If the speeds of mobile broadband increase, and they will as we approach the potential adoption of a new 5G standard in 2020, the offerings will likely be substitutable, not complementary, services from consumers' perspective, while still having vastly different architectures and resource issues relevant to the Net Neutrality discussion. Therefore, the idea that we should tie our section 706 report finding to the belief that consumers must have both is flawed and strains credibility.

Moreover, the text of section 706 asks whether "advanced telecommunications capability is being deployed" and the term is defined "without regard to any transmission media or technology". That suggests to me that as long as consumers have access to such capability, regardless of how it is provided, then the test is met. Therefore, there is no statutory basis to break out mobile from fixed and require that both be available to reach a positive finding. Why not just admit the Commission is moving the goalposts

¹ Joseph O'Halloran, RAPIDTVNews, Full-scale IP and 4KTV Adoption Considerably Slower Than Expected (June 23, 2015), <http://www.rapidtvnews.com/2015062338814/full-scale-ip-and-4ktv-adoption-considerably-slower-than-expected.html#axzz3hlArBdJp>.

once again based on a false dichotomy for the purpose of trying to preserve its fake section 706 “authority”?

Perhaps the most frustrating part of this annual charade is that the Commission contorts itself to reach a predetermined negative finding in order to justify the increased regulation of broadband providers, but does not do the hard work of advancing broadband to consumers in unserved areas. The last Report was accompanied by an NOI with a few half-hearted suggestions for promoting deployment. To supplement those meager offerings, I suggested several measures, such as completing a plan for the Remote Areas Fund to bring service to the hardest to reach consumers, as well as streamlining regulations, such as the Part 32 accounting rules, that cause carriers to spend resources on regulatory compliance rather than deployment. Six months later, the Commission has made no apparent progress on any of these ideas. When the relevant Committees in Congress can explore numerous ways to promote broadband deployment, why is it that the Commission cannot do so? Let’s roll up our sleeves and remove the barriers to deployment. Instead, the Commission seems intent on actively discouraging deployment by heaping on new obligations, as we just discussed in the Tech Transitions or “Emerging Wireline” item.

I appreciate that some of my concerns were accommodated, including elimination of the notion that a positive finding would require that providers engage in cyber risk management practices, like the NIST Cybersecurity Framework, as part of our statutory determination. This line of questioning raises many problems, including the attempt to coerce providers toward a standard that is supposed to be voluntary. It is completely inappropriate to shoehorn a subject like cybersecurity into the inquiry when the statute contemplates no such thing.

Nonetheless, I have strong misgivings about where this latest proceeding is headed, and I must concur on the substance of the NOI.