

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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 strongly oppose the notion that broadband is not being deployed in a reasonable and timely fashion, as outlined in the law. Regardless of whether the standard is 25/3, 10/1, or some other combination of technologies and metrics designed to abuse section 706 and generate regulation, the report continues to show steady progress in connecting unserved Americans. In fact, even at the artificially high and prematurely adopted 25/3 standard, called “table stakes” by some, the number of unserved Americans has dropped from approximately 55 million (17 percent of the population) to approximately 34 million Americans (10 percent of the population) in just one year. The report even concedes that the data are “notably better” than last year. But apparently no amount of progress will ever be good enough for a Commission that is bent on regulating broadband at all cost.

Indeed, the fact that so much progress has been made puts the FCC in an awkward spot. Last January, the Commission expressed concern that the number of unserved Americans had dropped by only three percentage points. Given that it has dropped by another seven, the FCC had to sound a new alarm. Now the Commission is “not satisfied” that the number of unserved is “nearly the population of Canada”—as if that is a useful measure of broadband deployment in the United States. If the number drops to 24 million next year, will we be reminded that that is the population of Australia? The mock outrage and phony comparisons only serve to highlight that the actual data in the report don’t matter and the politically-driven findings are a sham.

To divert attention from the substantial progress made on fixed broadband, the report includes a lengthy discussion on mobile broadband. As I predicted, the Commission now finds that the availability of advanced telecommunications capability requires access to both fixed and mobile service. The idea that we would need to see close to 100 percent availability of each service in order to reach a positive finding is ludicrous. This siloed way of thinking is outdated and simply does not comport with usage trends. The report is quite certain that fixed and mobile broadband aren’t substitutes, which is a completely erroneous conclusion, given that it hasn’t even defined mobile broadband service yet. But it also runs completely counter to the generational preferences and views on substitutability noted in this very report. This is just another avenue to preordain next year’s negative finding.

In addition, I have serious concerns with the analysis regarding broadband deployment to schools. The connectivity goals established for the E-Rate program were just that—goals. They were not intended to be used as benchmarks to be measured and acted on here. I have already heard reports that schools are making purchasing decisions based on the goals—driving up demand on the consumer-supported universal service fund—regardless of whether their actual usage warrants purchasing additional capacity. By pretending the E-Rate goals are benchmarks, as done here, the Commission gives schools a further push to overspend, wasting scarce universal service dollars without actually helping the children.

I also continue to object to the inclusion of privacy and security as barriers to deployment. The Commission has no authority to regulate in these areas, and should not be examining them here. I remain concerned that this line of thinking ultimately could result in the FCC creating duplicative and potentially conflicting burdens on broadband providers, leading to cost increases for consumers.

In sum, the task before us is to consider whether deployment in the United States is reasonable and timely, and the objective, empirical answer to that is a resounding yes. In fact, it is more than reasonable considering the unnecessary burdens that the Commission has continued to heap upon

broadband providers in the meantime. While there is more work to be done—particularly in the rural and remote areas of the country that I've been spending a great deal of time on—I do not agree with the analysis or negative finding and I must dissent.