

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

Re: *Technology Transitions*, GN Docket No. 13-5; *USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3; *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358.

I agree wholeheartedly with the Commission's assessment that "[t]here has been an indisputable 'societal and technological shift' away from switched telephone service as a fixture of American life." While switched access service "once dominated the landscape", demand for the service has "plummet[ed]" as consumers have switched to wireless and VoIP platforms—to the extent they make calls at all. Instead, consumers have voluntarily switched to a degree for some and to a considerable amount for others to text, email, video chat, and social networking applications to meet their communications needs.

I am pleased that the Commission recognizes this and has finally issued a Declaratory Ruling granting USTelecom's long-pending petition for relief from dominant carrier regulations with respect to switched access voice. While I would have decided the petition on broader grounds, and provided even greater relief, any step to remove unnecessary regulation is a step in the right direction.

However, I find it hard to reconcile the Commission's findings in the Declaratory Ruling that consumers are "increasingly able and willing to abandon their landlines in favor of communications technologies that do not rely on local telephone switches" with the statement in the Second Report and Order that "the special and long-standing importance of voice service to consumers warrants developing ... additional criteria for streamlined treatment during technology transitions." This particular technology transition is nearly over. The item states that almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities.

If it were so important to adopt criteria to ensure consumers receive an adequate replacement, that train left the station years ago. The millions of consumers that have already abandoned legacy voice service seem to have their own criteria in mind, and there are a plethora of options that apparently meet those criteria. To the extent legacy voice service remains "special" to some consumers, the Commission could continue to ensure that consumers receive adequate notice of discontinuances so that they can plan accordingly. But in general, the proper role for the Commission, at this stage, is to remove obstacles to innovation and consumer choice, not create new ones.

When I think of a streamlined process for discontinuing legacy services, I envision fast tracking applications for services that are no longer widely used by consumers. It would not entail things like three more prongs, network testing, cybersecurity certifications, promises to support fax machines for another nine years, or a "totality of the circumstances" review, whatever that means. Only the FCC could create a process that imports all of the existing rules, adds some new ones, makes no assurances about timing, and call it "streamlined" with a straight face. And let's face facts that despite how it is portrayed, this new process is going to become the sole standard for getting Commission approval on such matters.

I am not surprised that the Commission goes to great length to stress how voluntary this process is because it does not actually comport with section 214 of the Act. I do not begrudge any carrier that decides to take advantage of the new process. However, I do not support the expansion of section 214 to implicitly regulate new services. By effectively subjecting replacement offerings to rules originally

adopted for legacy voice service, the Commission is further extending its regulatory overreach, and that is terrible precedent.

Even worse, the Commission uses this optional process as an excuse to create cybersecurity requirements for replacement offerings that never applied to legacy voice services. As I have said many times, the Commission has no authority to adopt cybersecurity requirements. While I certainly appreciate being lectured at our last meeting that somehow raising objections to illogical network protections was highly irresponsible, nothing changes the fact that cybersecurity is an important issue and Congress has assigned authority to oversee it to other agencies. Therefore, I do not support its inclusion in this item, voluntary or not.

Moreover, the cybersecurity section stands in stark contrast to other parts of the item, where the Commission concludes “this is not the appropriate forum in which to impose new substantive requirements”. Of course, the Commission falls back on the familiar refrain that the new cybersecurity requirements are limited to the voluntary process. But the Commission has consistently dispelled the notion that its foray into cybersecurity is either limited or voluntary.

Regarding the Order on Reconsideration, I support the common sense fix to ensure that competitive LECs are not potentially liable for violating our discontinuance rules for reasons entirely outside of their control.

In sum, I thank the Chairman and staff for working with me to come to resolution on the Declaratory Ruling, but I had hoped to see more progress made to remove legacy rules and barriers to discontinue services that most consumers no longer use. Two and a half years ago, when the Commission set up a voluntary process for technology transition trials, it was so laden with conditions that there were almost no participants. I am skeptical that this latest voluntary process will be any different.