

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199*

Overall, this item faithfully and sensibly meets the obligations required by Congress as provided for in Section 706 of the Telecommunications Act of 1996. While I may not agree with all of the findings contained within, it is worthy of my support and I lend it such.

Given the tortured process previous Commissions have used to conduct this work, it is refreshing to see one conducted and completed in an honest and straightforward manner. Instead of presupposing the answer and then working backwards or, alternatively, being afraid to make any determination, the Commission started with a public inquiry to secure the appropriate collection of data, proceeded to its analysis, and reached a corresponding conclusion detailed in this report. This Commission was actually willing to do the expected work and let the plethora of data provided prove the case. What a novel concept!

*The Data Support A Positive Finding*

Fundamentally, the question that this item must answer is “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>1</sup> By any account, the picture with regards to the availability of advanced telecommunications services (i.e., broadband) is very robust and growing. In examining the data, it indicates that 95.6 percent of all Americans have access to fixed broadband with speeds exceeding the 25/3 Mbps threshold that was set by the last Commission.<sup>2</sup> And this excludes consumers that have service at or above 10/1 Mbps, which is a standard supported by my fellow Commissioners for purposes of our universal service High-Cost programs. Moreover, this report reflects a snapshot in time from over one year ago, meaning that deployment is actually more extensive today, as broadband providers have further expanded their networks and/or reach since that time period.

To argue that deployment is not sufficient to meet the statutory test ignores the wording of the law and its context. At no point should – and the statute doesn’t require – the standard for a positive finding to be 100 percent, perfection. Instead, a finding should be positive as long as deployment is “reasonable and timely.” That is, the provision focuses on year-to-year progress, not achieving a particular threshold any given year.

Certainly, we should acknowledge the progress that has been made. For instance, broadband delivered over fixed terrestrial networks with speeds above 25/3 has increased by over 10 percentage points in four years, from 81.2 to 92.3 percent.<sup>3</sup> Indeed, I continue to be impressed by the progress that has been made given that, as deployment edges closer to universal access, the remaining unserved communities are among the hardest and costliest to serve.

*Commission’s Work Continues Notwithstanding this Finding*

Importantly, the report’s conclusion does not mean that there is no additional work necessary to reach those Americans who do not have broadband today. There most certainly is. According to our data, 14 million Americans remain without broadband at the 25/3 threshold, not 24 million as some have

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<sup>1</sup> 47 U.S.C. § 157 nt.

<sup>2</sup> *Supra* para. 51. This figure includes satellite provided service as it should not matter what technology is used to achieve the result.

<sup>3</sup> *Supra* Table 1.

claimed.<sup>4</sup> Not to diminish this figure, but it is important that we accurately describe the problem. Addressing this unserved population is why I have worked so hard on modernizing our universal service High-Cost programs. It's why I pushed for quick completion and specifically multi-round, reverse auctions for Connect America Fund (CAF) Phase II. It's why I have publicly commented and testified in Congress for the need for preemption of state, local and Tribal barriers to deployment for broadband infrastructure. It's why I helped lead the passage of needed reforms for rate-of-return standalone broadband reform. It's why I took the lead in seeking passage of the Alaska broadband plan. And, it's why I have been a lone voice at the Commission seeking to stand-up the Remote Areas Fund (RAF), which seems to be nothing more than wishful thinking at this point. I think it is fair to ask any item naysayers, if you truly care so much about the unserved, why have you barely lifted one finger to help me develop and deploy the RAF?

Contrary to the criticism of some, a positive finding under this item *does not mean* that the Commission will stop its efforts to ensure every American who wants broadband access has it. It personally pains me to know that there are so many Americans who have inadequate broadband with little hope of improvement. Nothing in this item or any other will keep me from pushing to address this situation in a timely, thoughtful, and cost-efficient manner. To be abundantly clear, passage of this item does not disrupt the work that will come tomorrow, the next day, or the many days to come. I am committed to ensuring the Commission does all it can, including removing barriers to deployment as referenced in the law, to bring broadband throughout our diverse, geographic landscape.

#### *Misinformation & Missteps*

There has been a tremendous amount of misinformation spewed on this item since the Notice of Inquiry (NOI) stage.<sup>5</sup> Take for instance the 25/3 Mbps benchmark for wireline broadband adopted a few years ago, which the NOI clearly proposed that the Commission retain.<sup>6</sup> Accusation after accusation was made that the Commission was watering down the 25/3 benchmark, while nothing could have been farther from the truth. Instead, the NOI explored whether to adopt a different standard – as it is obligated and must do to actually conduct a real review. But there was never any magical conspiracy to snooker everyone into thinking every household had “broadband” by shifting the benchmark. Pure goofiness.

That being said, I strongly disagreed with how the 25/3 benchmark came to be as a result of the Commission's 2015 report. Specifically, I firmly believe that it was adopted under an intellectually-broken process to achieve a political outcome. Moreover, I questioned at its adoption whether such a standard was defensible since it was based on laughable scenarios involving then early-stage 4K television or multiple users and/or devices in a household simultaneously engaging in extremely high-bandwidth activities, which certainly could have occurred but was nowhere near any relative societal norm. It may not be today either. But, while I still have some serious doubts about this benchmark, I tend to see some value in maintaining it, particularly since it allows an apples-to-apples comparison over previous years.

Where I think the item gets it completely wrong is its treatment of wireless broadband. On multiple fronts, the report minimizes the enormous value and market realities brought forth by wireless broadband. In particular, I disagree with the unwillingness of the Commission to set a wireless benchmark. To argue year after year that the data is lacking amounts to an insufficient excuse. The Commission is more than capable of determining a justifiable, sensible benchmark for wireless broadband

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<sup>4</sup> The 14 million figure also includes satellite provided service that meets the 25/3 threshold.

<sup>5</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, Thirteenth Section 706 Report Notice of Inquiry, 32 FCC Rcd 7029 (2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0808/FCC-17-109A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0808/FCC-17-109A1.pdf)

<sup>6</sup> *Id.* at 7033, para. 12.

services, and indeed it has done so for purposes of Mobility Fund Phase II. The 10/1 Mbps suggested in the NOI was a reasonable place to start, but I was willing to be convinced of some other standard. However, abdicating this responsibility, as the report does, boggles the mind and diminishes the value of this report.

More importantly, I disagree with the Commission's reluctance to firmly acknowledge that wireless broadband is a substitute for wireline service. It is not a mere complement. Every day, more and more consumers are flocking to wireless broadband and the mobile experience it provides despite the differences in speed. In other words, consumers, especially in the less affluent and younger populations, are willing to trade speed for flexibility. This is not too dissimilar to how consumers were willing in the early 2000s to trade wireline voice call quality for inferior wireless voice service that offered mobility. Today, wireline voice service subscription is a mere pittance compared to its former self. Further, the number of U.S. consumers that have gone completely wireless has exceeded 52 percent.<sup>7</sup> That trend will continue, if not accelerate, especially with the near ubiquitous availability of 4G LTE.

One only has to go visit and talk with actual American consumers to realize what is happening in the marketplace. Given the choice between gigabit speed wireline broadband and slower, data-capped wireless service, consumers that I have met with and providers deploying service in neighborhoods will make clear that the wireless service is preferable – by far. No media stunts or wireline-fasting contests can prove otherwise.

And, the day is fast approaching when any speed differential between the two will disappear completely. New wireless technologies are in the deployment stage, and many more in the development stage, that will eviscerate any perceived speed barriers. Mobile 5G will be here in only a matter of time and it's likely much sooner than the Commission envisions in this item. Maybe next year's report will allow the Commission to fully recognize marketplace and technological reality as it pertains to wireless broadband.

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For the myriad of reasons provided, I support the adoption and release of the Commission's 2018 Broadband Deployment Report.

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<sup>7</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey*, January–June 2017 (released December 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf>.