

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
FEDERAL COMMUNICATIONS COMMISSION**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY**

"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"

DECEMBER 12, 2013

Thank you Subcommittee Chairman Walden, Ranking Member Eshoo, Full Committee Chairman Upton Ranking Member Waxman, and Members of the Subcommittee.

It is a distinct honor to be before this Subcommittee. I have great reverence for this body and its Members. As a staff member to the Committee for eight years, I spent many days and nights in this very room working with colleagues on both sides of the aisle to resolve difficult policy issues. My time here taught me valuable lessons that I took with me to the U.S. Senate and helped prepare me for my current role at the Federal Communications Commission.

I want to extend my appreciation to my fellow colleagues and the staff of the Commission. It has truly been a smooth transition and the FCC family has been incredibly welcoming. As I have previously stated, I look forward to following Chairman Wheeler's leadership as best I can while staying consistent with my principles. Communications policy has not been, and should not be, overly partisan, and I do not intend to make it so. When my colleagues and I do disagree, I hope to do so quickly, respectfully, and with the intent of collaborating on the next item.

My overall goal while at the Commission is to work with the Chairman and my fellow Commissioners to make the necessary decisions – decisions that will help all communications participants, especially

consumers, by bringing greater certainty to the marketplace. To do this, I am digging into the substance, asking questions, requesting meeting participants to provide facts and figures, providing feedback early in the process, and making myself available to vote expeditiously as items are presented. By making prompt decisions, we also allow entities who disagree to seek reconsideration at the Commission or through the court system.

I start my time at the Commission with the same fundamental principle that I had as a staff member: the Commission was created by Congress, the true people's representatives, to implement its laws consistent with the U.S. Constitution. The Commission does not have the authority to ignore the statute, statutory deadlines, or to pick and choose which parts it prefers to implement and enforce. In instances where a statute may be less than perfectly clear or where Congress has delegated specific authority, the Commission is obligated to adhere to the intent of the statute and not substitute its viewpoints for those of the men and women of the United States Congress. If the Commission is lacking authority it would like to exercise, it should seek out the Members of this Committee to change the statute. In other words, I was sincere when swearing an oath to "faithfully discharge the duties of the office" as a Commissioner.

I would like to take this opportunity to briefly provide my views on a number of select topics that may dominate the Commission's time and attention in the coming months and, therefore, deserve special mention:

Spectrum Incentive Auctions – The Commission has the large task of implementing the Middle Class Tax Relief and Job Creation Act of 2012. Contained within that legislation is the framework and authority for the Commission to proceed with the most complex spectrum auction ever attempted. I helped shape and craft the text of the incentive auction statute, in partnership with the able Republican and Democratic staff from the House and Senate. It is by no means perfect law and represents a reasonable compromise on most parts. The Commission's task is to entice enough broadcasters to participate, reasonably protect

those broadcasters that choose otherwise, and convince wireless companies to bid on the spectrum made available. And we must get the process right: a failed auction helps no one. Therefore, my guiding principle with regard to the incentive auction is to conduct it as soon as practicable but to focus on success.

IP Transition – In my opinion, the phrases “IP transition” and “IP migration” are misnomers because they imply that communications is moving orderly from old technologies to IP-based systems. That is simply incorrect. We are in the middle of an IP technical revolution and it is mostly happening notwithstanding the FCC. To illustrate: the Commission’s recent local competition report revealed that, as of December 31, 2012, 43.5 percent of residential wireline voice connections were VoIP.¹ In response to the call by outside parties, Chairman Wheeler has proposed a rough outline on how to proceed with trials of certain aspects of IP technology in order to understand the impact of moving to IP-based systems. I am very supportive of these efforts, as long as the Commission does not allow the trials to lead to delay or inaction.

Universal Service – The Commission is entrusted by statute with overseeing effective and efficient universal service programs. During my Hill tenure, I worked for a number of House and Senate Members who represented considerable rural and high-cost areas, and so I am extremely familiar with the difficulties faced by providers trying to offer services and rates that are reasonably comparable to those offered in urban areas. On the other side of the equation, it is important to remember that funding for these programs comes from American ratepayers, and thus, the Commission is a steward for their generosity; they pay higher rates so other Americans can get better services at lower rates. In 2011, the Commission completed a multi-year effort to reform and transform the high-cost universal service program, now called Connect America Fund. While I was not at the Commission at the time, I am

¹ Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2012*, at 14 (Nov. 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf.

supportive of many provisions contained in that decision. That said, I have heard from a number of entities regarding concerns about how the Commission's order has been implemented through follow-up orders. I am in the process of obtaining the facts and figures to form an accurate assessment of the concerns and complaints, which may be valid. In general, I believe that if there are errors in models, assumptions, or data, the Commission must make the necessary corrections, and do so promptly, but the general tenants of the universal service reform effort are strong and must be maintained.

Media Ownership – The Commission has failed to comply with the obligations required by the Telecommunications Act of 1996, which were subsequently amended by Congress, to review and repeal or modify any of its media ownership rules that are no longer in the public interest as a result of competition. In fact, I was involved in the decision to extend the time for review under section 202(h), based on a claim made by the Commission and some outside parties that the original two-year review process was too short and prevented thoughtful inquiries. Sadly, we did not know then that a quadrennial review requirement would lead to near-complete paralysis, allowing proponents of a static market to win by default. This is unacceptable; the Commission needs to complete its 2010 review and vote. As stated above, the Commission has no authority to ignore the statute.

FCC Process Reform – Over my years working on this Committee and in the Senate, I have worked on a number of legislative efforts to reform the Commission's operations and structure. I will defer to the Congress on legislative changes to alter the workings of the Commission, but I support the general thrust of the efforts to make the Commission more effective and efficient and to save taxpayer dollars. Chairman Wheeler and I – as the new kids on the block, as he likes to say – have had discussions on ways to improve the overall efficiency of the Commission, and I am very open to considering ones that can be executed without legislation. I also look forward to completion of the Chairman's review on process reform. In the meantime, I offer myself up as a resource to Members of the Committee on technical or policy proposals to improve the Commission's functions.

Distracted Driving – Part of the role of a Federal Communications Commissioner is to conduct outreach and provide information to the public. I take this function seriously, and it is why I am choosing to spend some time on the issue of distracted driving caused by wireless device users. Drivers need to put their wireless phones down and focus their Eyes On The Drive. Let me be clear, my view is that the wireless industry is doing yeoman’s work to get out the message: they are aware of the problem, they are dedicating considerable resources to finding solutions and education, and they are working hard to prevent the horrible tragedies caused by texting, viewing, emailing, tweeting, mapping, posting, among others while driving. It does not appear that more government regulation would be helpful in this space. Instead, I am talking with my other Commissioners to find ways to use our voice in non-regulatory, non-costly ways to educate the public and prevent senseless accidents.

I look forward to answering the questions from the Members of this distinguished institution.