

**TESTIMONY OF FCC COMMISSIONER MICHAEL O'RIELLY
BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE,
SCIENCE, & TRANSPORTATION**

"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"

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Thank you, Chairman Thune, Ranking Member Nelson, and Members of the Committee for the opportunity to appear before this distinguished body to discuss the important work occurring at the Federal Communications Commission.

I would like to raise a handful of seemingly unrelated issues to your attention, and I would be pleased to answer any questions you may have.

Process Reform

Last November's election led to a change in leadership at the Commission. While I miss working with two of my since departed colleagues, there is breath of fresh air and a new spirit of cooperation not present in the last Commission. It is certainly early, but the remaining three commissioners seem to be of the mind that if we disagree in some capacity on an item, there is willingness to move on to the next one without laboring in the past, which I think was noticeable at our last Commission Open Meeting.

Let me acknowledge and applaud Chairman Pai's immediate focus on improving our internal workings and procedures, which has long been a cause of mine. In approximately five short weeks, the new Chairman has ushered in reforms to improve the efficiency, transparency, and accountability of the Commission. From fixing non-existent post-adoption editorial privileges to publicly releasing the text of documents at the same time they are shared with Commissioners to ending the practice of providing outside parties with information before Commissioners were in the loop, process reform has been a necessary and important mark for the Chairman. Ultimately, I believe the ideas and reforms adopted to date, and potentially additional ones I have proposed, do not undermine the authority or ability of the Chairman to set and execute the overall Commission agenda. Hopefully, there is more to come, as I have a number of ideas for further reform, including changes to our delegated authority process and the scope of our information and data collections.

On this note, let me reiterate the need to conduct sound cost-benefit analyses as part of the Commission's consideration of new regulations on applicable industries. Too often under the prior Commission leadership, sufficient work was not done, certainly prior to votes by Commissioners, to calculate the particular costs that new burdens or obligations would impose on regulated entities. At the same time, past items have included vague or illusionary benefits of these new regulatory burdens. Together, the Commission lacked a key component, that I see as necessary, for determining whether a proposal is in the public interest. While it may

take some time to fix this situation, including centralizing and creating a new Bureau of Economics, I remain convinced that it is a necessary and appropriate change to our operating procedures.

Pirate Radio

It is discouraging to admit that a core function of the Commission – protecting the integrity of Commission-granted spectrum rights – is not being sufficiently achieved as it pertains to pirate radio “stations.” By illegally broadcasting with makeshift equipment and a laptop, these stations are sprouting up and causing harm to consumers and the industry. Today, these squatters are infecting the radio band at the expense of consumer services, including emergency communications and the financial stability of licensed radio stations. To put this in perspective, I recently learned from the Massachusetts Broadcasting Association that they previously found 24 pirates operating in one of their markets and the problem has only increased since the last examination. While this issue mainly affects four to five larger East Coast radio markets (e.g., Boston, Miami, New Jersey, New York), failure to properly address it highlights a deficiency in the Commission’s enforcement tools and undermines our overall creditability.

Thankfully, I believe that this situation is fixable and preventable. It will certainly take sufficient enforcement commitment and diligence, which I think exists from the personnel in our field offices and the addition of our new “tiger teams.” At the same time, I humbly suggest that the Commission could use some limited and targeted statutory authority dedicated to address pirate radio. Specifically, I propose that the Commission be able to seize equipment found in common areas that is broadcasting illegally in the radio band. In addition, our current fines should be increased, and some ability to impose penalties on those that directly and intentionally aid pirate stations could be helpful. While I would have concern if this authority were applied across the board, in this instance, I believe it would help minimize our current whack-a-mole approach that has proven less than effective.

Infrastructure

It is a high priority for me to ensure that broadband access is reasonably available to all Americans. To facilitate this, I have been intensely involved in completing the remaining pieces of our high-cost program, or Connect America Fund (CAF). The CAF is a \$4.5 billion annual subsidy program designed to address the difficult economics of serving those locations deemed high cost and extremely high cost. This work includes last year’s rate-of-return reforms to permit and fund standalone broadband, the two targeted programs specific to Alaska, the recent creation of rules for the Mobility Fund Phase II, and the upcoming CAF Phase II reverse auction. While I have not agreed with each and every decision – particularly those that may lead to inefficiencies or harm to non-targeted individuals or communities – I am committed to seeing these elements of the program through in a timely manner. Having all of those pieces in place seems to be the only way the Commission can finally make effective the nascent Remote Areas Fund to address the most difficult areas to bring service.

At the same time, standing in the way of greater Internet access nationwide are barriers imposed by state, local, and tribal entities. These range from maintaining difficult permitting and approval processes, attempts to extract enormous sums for tower siting and access to rights-of-ways, and efforts to establish government sponsored networks accompanied by favorable land, tax, and approval procedures. While the vast number of communities see the benefit of broadband deployment and welcome providers seeking to serve their citizens, there are bad actors that will likely require preemptive measures by the Commission. This problem will become even more acute as providers seek to deploy the next generation, or 5G wireless services, that will bring greater capacity, higher speeds and lower latency, but will also require many more wireless tower and antenna siting approvals. I realize that preempting local community decisions is a difficult topic to contemplate, but it has become necessary and appropriate for the Commission to exercise authority provided by Congress to address this situation.

On a related note, I know that there has been and will be considerable debate over whether to include new federal broadband spending in any larger infrastructure legislation. While this is a matter in the purview of Congress, I would like to add my thoughts to the extent that it is decided to do so. If new federal funds are made available to expand broadband availability, it would be my opinion and advice that any such funds be allocated on the condition that they be disbursed via the Commission's CAF program, rather than alternatives. The CAF is by no means perfect, but it is the best mechanism, compared to any others, to minimize overbuilding, inefficiencies and waste, and it could be quickly expanded to reach additional unserved communities.

International Internet Freedoms

Having just returned from the Mobile World Congress in Barcelona, I will share with you that a handful of my conversations with international representatives suggest increased concern that international governments, via different forums, continue to seek a greater role in Internet oversight and policy setting. That should be viewed as deeply troubling by all individuals that support and believe in an Internet relatively free from government control, and particularly by this Committee given its work to try to prevent ICANN from abusing its role post IANA conversion. I believe that the possible expansion of governmental interference in Internet governance and activities remains one of the greatest threats to its long-term sustainability and growth.

I intend to be active in the international events related to the Commission's functions and would be pleased to keep the Committee informed as circumstances warrant. Moreover, may I suggest that the Senate consider this threat as part of any nomination process to fill related positions within the new Administration, as well as staying in close contact with related offices within the Departments of State and Commerce.

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Thank you again for the opportunity to testify this morning.