

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

Re: Connect America Fund, WC Docket No. 10-90, ETC Annual Reports and Certifications, WC Docket No. 14-58.

When the Commission adopted rural broadband experiments in the January *Tech Transitions Order and FNPRM*, I concurred with that part of the decision for several reasons. I was concerned that experiments would distract the Commission from completing the already overdue high-cost reforms, including establishing a Connect America Fund in rate-of-return areas, and connecting unserved and remote parts of the country. I was apprehensive that experiments could be used as a vehicle to reconsider the established structure and terms of the Connect America Fund in price cap areas. And I expressed skepticism about using funding from “reserves” (i.e., money over-collected from consumers) to test out new policies through experiments or other pilot programs. Compared to what was discussed in January, the order adopted today is improved in terms of design and direction due to a great deal of hard work. Nevertheless, I continue to have some of the same concerns, plus a few more, so I must concur again today.

Focusing on the positives first, the competitive bidding process is more objective than the beauty contest that some had contemplated. If there is merit to be found in these experiments at all, it is in further testing the mechanics of auctioning support in high-cost areas so that we can finally adopt rules for the CAF Phase II auction to allocate support in areas that price cap carriers decline to serve. I’m also pleased that the experiments will be open to all types of providers and that the order renews our commitment to move forward with additional high-cost reforms in the coming months.

On the other hand, I am troubled by several parts of the order. First, it adopts a budget of \$100 million, which is at the top end of the range proposed in January. That is far more than what is necessary to run a simple test.

Second, the order sets the minimum broadband performance requirements at the higher speed levels that were proposed in the April *Connect America Fund FNPRM*, but that the Commission has not yet adopted. As I said in April, I’m concerned about increasing the requirements when there are parts of the country that remain completely unserved today.

Third, I am still worried about what conclusions may be drawn from participation in these experiments. For example, if many providers submit bids, will that give the Commission confidence to move forward with the current plan for the Connect America Fund, or will it be used to justify further increasing the broadband performance requirements or adding questionable new conditions? I was not here when the Commission adopted the 2011 reforms, and I may have done some things differently. But at this advanced stage, it is not appropriate to undo the policies and compromises that enabled the Commission to adopt a bipartisan reform order when prior efforts had failed. We need to move forward, tweaking along the way if necessary, thereby providing certainty to all affected and interested parties. Our constant delays are harmful, especially for build out, because they postpone desperately needed business investment decisions. Providers have been waiting more than two years for resolution on CAF Phase II, Mobility Fund Phase II, the RAF, and a long-term plan for rate-of-return support.

Fourth, I am concerned about the ability to apply rigorous oversight over all recipients that receive experimental funding, including electric co-operatives. Encouraging new entities to enter into this business can put captive consumers at financial risk. If the past has taught us anything it’s that running a broadband network—particularly in high-cost, low-density areas—is not easy.

Fifth, I had hoped that we would use this opportunity to begin spending down some of the reserved funds which could help mitigate USF fee increases. As an initial step, I would have focused on the balance of the unallocated funding—approximately \$120 million—but that idea was rejected. We can devote \$100 million from reserves to experiments and \$2 billion from reserves to create a new Wi-Fi program, yet we can’t apply any amount to reduce the contribution burden on ratepayers? In 2011, the

Commission said that reducing the contribution burden was an option. It is time to start exercising that option.

Finally, while I continue to question the value of the experiments, I appreciate that the Chairman and the staff were able to accommodate several of my suggestions, especially on the issue of cybersecurity. Information sharing is one thing, but imposing cybersecurity requirements and selecting funding recipients based upon those requirements is not something the Commission should do or has the authority to do. These experiments must not be a backdoor way to regulate on cybersecurity. Specifically, I am pleased that we agree that Commission staff may not examine recipients' networks or practices for cybersecurity risks or impose any cybersecurity requirements during this process.

While I am only able to concur with this item, I still hope we can wrap up these *one-time-only* experiments and quickly press forward with the remaining Connect America Fund reforms.