

**Remarks by Commissioner Michael O’Rielly
at the LinkIDAHO 2014 Broadband Summit**

August 19, 2014

(As prepared for delivery)

Thank you, Mike, for inviting me here today. It’s exciting to hear about the work that you—and all of the providers in the state—are doing to help fill the gaps in broadband deployment.

Let me begin by thanking the two Idaho U.S. Senators, who I had the privilege of working with in my previous employment, for highlighting this 2014 Broadband Summit. Senator Crapo was exceptionally helpful in bringing this event to my attention.

To provide a bit of background on me and the work of the Federal Communications Commission (FCC), I am the newest of the five members of the FCC, one of two Republicans, and have been in my current role for just over nine months. Previously, I spent the last 20 years working for various Members of the U.S. House of Representatives and the Senate, ending my time there with three and a half years in the Senate Republican Whip Office.

In preparation for this event, I had the opportunity to review the good work of LinkIDAHO and the contributions made by Idaho’s private sector broadband providers to improve availability and speeds in your state. Two key components of your success to date have been identification and collaboration. By identifying unserved areas and future demand needs, the folks in this room and many others collaborate with private sector efforts and public initiatives to improve broadband availability in Idaho and throughout the Western United States. And you should be commended for doing so.

What you are talking about at today’s conference is a critical topic back in Washington. Everyone understands the importance of broadband and the Internet to our nation’s economy and to American jobs and our daily lives. Where we differ, at times, is what to do about it. Historically, the FCC has applied a light regulatory touch in this space on the premise that doing so will create a positive climate for investment and innovation. That general approach has been borne out with hundreds of years of experience and data in other contexts, and is grounded firmly in American capitalism.

As the Internet grows in importance, some think that this time tested approach is still the right path. Mark me down as one of them. Others, however, have begun calling upon the FCC to rethink that approach and take a more regulatory path. In short, we are at somewhat of a policy crossroads. The choices that we make in the next few years will be crucial to this sector and the Nation at large.

When faced with such critical decisions, I tend to set forth principles or recommendations that reflect how I will be approaching the issues. Today, I will lay out six things I think the FCC can be doing right now to encourage broadband investment and Internet innovation. They span a variety of proceedings from net neutrality to universal service.

I’ll start by reflecting on where we are today, which shapes how I think about these issues. I promise to leave time to hear from you and answer your questions.

Broadband Investment and Internet Use Have Transformed Our Lives

To me, the Internet is the greatest man-made invention that I will see in my lifetime. In what seems like the blink of an eye, the Internet has become an economic and social powerhouse, connecting billions of people and businesses around the globe. It has fundamentally changed the way that people

live, including how they obtain news, receive healthcare, are educated, engage in civic discourse, and conduct business.

The growth in Internet usage has been remarkable. By 2015, Cisco predicts that there will be nearly 3 billion Internet users,¹ while others think that figure could reach as high as 5 billion by 2020.² Pew Research's Internet Project reports that, in 2014, Internet usage is at 87 percent, up from 66 percent in 2005 and from 14 percent in 1995.³ Looking beyond people to the Internet of things, Cisco predicts that the number of network-connected devices will be more than 15 billion, twice the world's population, by 2015.⁴

These gains are made possible by the billions of dollars invested in broadband infrastructure. Since 1996, broadband providers have invested more than \$1.2 trillion in wireless and wireline broadband,⁵ spending roughly \$73 billion annually.⁶ Wireline providers account for more than half of this total investment.⁷ In less than two decades of growth, more has been spent on broadband than was spent to construct the Interstate Highway System and on the Apollo Moon Landing.⁸

The result of this investment has been increased access and competition. The National Broadband Map shows that 93.4 percent of the U.S. population has access to wireline broadband service at speeds of at least 3 Mbps downstream and 768 kbps upstream and that 98.6 percent has access to wireless broadband service at such speeds.⁹ In addition, over 87 percent of the population has access to two or more wireline broadband providers and over 99 percent has access to two or more wireless broadband providers.¹⁰ A report last year by ITIF confirmed these findings, noting that "America enjoys robust intermodal competition between cable and DSL fiber-based facilities, with the third-highest rate of wired intermodal competition in the OECD (behind Belgium and Netherlands)" and that "America leads the world in the adoption of 4G/LTE mobile broadband."¹¹ In addition, WISPA notes that wireless Internet service providers (WISPs), although relative newcomers, have grown dramatically, now providing Internet access to more than 3 million people in their homes, businesses and communities.¹²

Beyond terrestrial investment, satellite services have also expanded. New players like Google are entering that market,¹³ and long-time companies like Inmarsat, Iridium, ViaSat, and Echostar Hughes are investing billions launching next generation satellites with expanded capacity to offer high-speed broadband.¹⁴ Indeed, with competitive download speeds of up to 12 Mbps, for the second year in a row, ViaSat was at the top of the FCC's list of Internet providers who met or exceeded the speeds they advertised.¹⁵

Although this is my first time in Idaho, I am aware that cable, DSL and wireless technologies have been deployed throughout much of the state—79 percent, 86 percent, and 98 percent, respectively.¹⁶ These levels follow, roughly, the national averages. While fiber deployment has not been quite as robust, investment in fiber is expanding.¹⁷ As a result, 78 percent of the population lives in areas where they can choose between two or more wireline broadband providers for their Internet access.¹⁸ And 98 percent of the population can access the Internet by choosing from at least two wireless providers. More rural portions of the state face obstacles that are not atypical for broadband availability among such areas—low population density and difficult terrain, which in the case of Idaho generally means the Sawtooth Mountains. It is not surprising to you that a state, such as Idaho, with a significant amount of natural wilderness and U.S. national parks also has tough terrain. Yet in the face of such challenges, your state has increased adoption of high speed broadband by 179 percent in the last year.¹⁹

I view all of the foregoing data as evidence that the current broadband rollout and availability—in other words, your hard work—has been an incredible success story. Nevertheless the FCC seems intent on changing course. Rather than upend years of progress, I have six recommendations to promote investment and innovation within the successful framework that exists today.

First, Stop Any Net Neutrality Rules

What seems atop of everyone's mind at the moment is the Net Neutrality, or "Open Internet," proceeding. As I'm sure you are aware, the FCC has proposed to adopt new rules and toughen others to ensure that all Internet traffic is treated equally. What's wrong with that? A number of things, actually.

Above all, it is my assertion that the FCC does not really have authority to adopt net neutrality rules. In my opinion, based on working in the communications policy field for two decades and having worked on the Telecommunications Act of 1996, the FCC is relying on one court's dubious interpretation of a throwaway provision of the 1996 Act to give it vast authority to regulate broadband service and anything else that connects to or rides over it. The problem is that this innocuous provision—section 706—was never intended to give the FCC independent authority to regulate the Internet. At absolute most and that may be being too kind, it was designed to trigger further deregulation of broadband services. So why would the FCC rely on this provision? Emboldened by the court's decision, and urged on by outside interests to intervene, the temptation to regulate seems too great for the current FCC to pass up.

But even if the FCC had clear authority to act, I'm still not convinced that there's good cause to do so. My guiding principle at the FCC is economic freedom: the idea that free markets work best and that the government should intervene only where there's real evidence of a market failure that's causing harm to consumers. We've received a record number of comments in the net neutrality proceeding (and I'm starting to go through them) but so far, I still haven't seen any that establish a current harm to consumers.

Moreover, there's a real downside to intervening here. Broadband regulations will impede its growth—both in terms of availability and speeds. That's because regulations carry costs, which means less investment in deployment and upgrades, or more fees for consumers. Here the FCC is proposing to adopt detailed disclosure, reporting, and certification requirements for providers—information that may not even be useful to ordinary consumers. It is troubling that the FCC might impose extensive new burdens to address hypothetical harms and provide no real benefit. And that's without even getting into the chaos that would ensue if the FCC were to seriously consider re-classifying broadband as a Title II service.

Second, Remove Unnecessary Burdens

Once regulations get added to the books, they tend to remain there long after technology and marketplace changes have rendered them obsolete and unnecessary (if they were ever needed in the first place). Because these rules can continue to impose costs on companies, the FCC should be more vigilant about reviewing its regulations and removing ones that have outlived their usefulness. I recognize that some may need to be phased out rather than eliminated immediately. But where that's true, we should at least start down the path of paring them back and establishing sunset dates.

When I think of rules that could be eliminated, reduced, or phased out that may be pertinent to your Summit, two sets of rules immediately spring to mind: separations and regulatory accounting. Admittedly, this may be a bit technical or deep in the regulatory weeds but these are important legacy burdens needing attention.

As most of you are aware, jurisdictional separations is the process by which *incumbent local exchange carriers* apportion *regulated costs* between the *intrastate and interstate jurisdictions*. But the jurisdictional separations rules have been frozen for thirteen years. During that time, the marketplace has changed, and thus the concepts of regulated costs and jurisdictional line drawing no longer make sense.

Moreover, these onerous rules only ever applied to incumbent LECs to begin with, and many of the larger LECs have gotten out from underneath them through a series of forbearance orders, leaving only the smaller LECs on the hook. And the *USF/ICC Transformation Order* fundamentally changed how regulated carriers recover their costs, which significantly diminished the relevance of jurisdictional separations for even the small carriers.

The FCC just extended the freeze for another three years to give the Federal-State Joint Board more time to complete a comprehensive review. But that doesn't mean we can sit back and ignore the rules. The freeze itself is now causing its own problems, prompting carriers to seek waivers to opt-out of the frozen rules. Therefore, I would like to see the Joint Board use the three year window to consider how to sunset the rules altogether.

Regulatory accounting is another area ripe for consideration. Incumbent carriers are still required to record their expenses, investments and revenues in accordance with the Commission's arcane accounting standard in addition to following GAAP and, increasingly, International Financial Reporting Standards (IFRS). In 2012, US Telecom sought forbearance from these rules, among other things, arguing that: there is no clear use for or relevance to the Part 32 information being collected; Part 32 imposes requirements that in some cases duplicate and in other cases conflict with GAAP; and Part 32 distorts competition by being applicable only to one subset of service providers. Last year, the FCC declined to grant forbearance from Part 32 but promised to seek comment on revising its regulatory accounting rules.

I can't say much more on the topic because we are currently considering a Notice of Proposed Rulemaking on this subject. But I think serious review is necessary so I hope that, if adopted, we will get a robust record with practical suggestions on how to sunset or, at a minimum, streamline these rules. It would also be helpful to get more detailed information on the costs associated with these rules. There's no sense in continuing to require carriers to incur the costs of keeping two sets of books if the additional regulatory accounting requirements no longer serve a useful purpose. To make sure we all stay on task, I have called upon the FCC to complete this proceeding no later than the end of next year. To help make that possible, I've also asked that staff put forward concrete proposals to streamline the rules. And I've asked whether the FCC has other tools in its toolbox besides these accounting requirements to meet the limited and well-defined needs, or if there are safe harbors we could adopt to further streamline any remaining requirements.

Third, Complete the Reforms Already In the Works

There are certain circumstances when the FCC is required to act—namely, when Congress has directed the FCC to address an area or issue. Universal service and the spectrum incentive auction are two chief examples.

The FCC has a statutory requirement to ensure that all Americans have access to advanced services, including broadband. As you know well, providers are investing significant capital to extend coverage and speeds of broadband service throughout their service areas. But high-cost areas can have vastly different terrains and population densities, making universal service a challenge. That's why there are some places that are simply uneconomical to serve absent Federal support.

To be completely candid, most of the Federal grants and programs that some of you have used in the past have run their course. I would not expect to see a renewal or extension of those programs in most instances. While those programs have ended or are transitioning down, the FCC is ramping up its efforts to fund broadband for unserved areas via the universal service Connect America Fund ("CAF") Phase II. We hope to have the Phase II auction process set later this year to early next year. This will make

available billions of dollars over as much as the next decade to fund private sector broadband providers willing to serve designated price cap areas.

While our charge is clear, the path forward has not been easy. In addition to CAF Phase II, providers have been waiting for resolution on a number of universal service decisions, including Mobility Fund Phase II, the Remote Areas Fund, and a long-term plan for rate-of-return support.

Unfortunately, rather than move quickly to implement these parts, the FCC is considering further changes to rethink past judgments. I remain troubled by any delays to moving forward on USF decisions. Accordingly, I call on my colleagues and Commission staff to dedicate the time and attention needed to bring these issues to a resolution. Completing the CAF Phase II auction next year and finalizing rules for the other programs would dramatically alter investment and availability of broadband in more rural parts of America.

Similarly, the Commission is also in the process of fulfilling our requirements under the law to establish a spectrum incentive auction. This process, which will repurpose spectrum now used for broadcast television to commercial wireless broadband services, will also have an impact on what is known as television white spaces. Additional nationwide spectrum that has particularly strong characteristics for mobile broadband may be an important component to address broadband availability in hard to reach markets. However, the incentive auction will also alter the amount of available spectrum in the television band where unlicensed use is allowed. The Commission has much work to do in this area, but I am working to ensure that we comply with the statute, while providing as much unlicensed spectrum as possible.

Fourth, Don't Change Program Requirements Midstream

I would never suggest that the FCC should rest on its laurels, but I'm also frustrated by the tendency to start second-guessing rules as soon as they are adopted, which creates delays and adds costs. For instance, whether the Commission's current definition/standard for "broadband" adequately captures the current marketplace is a fair debate. But let's not ignore the real impact of reopening the Commission's past decision at this juncture. Specifically, the FCC has raised the prospect of increasing the broadband speed standard for all support recipients from the current 4 Mbps downstream to 10 Mbps downstream—*before* we've completed the task of ensuring that all consumers have access to 4 Mbps.

The 4 Mbps standard that the Commission selected seems to be sufficient to enable people to send email, look for jobs, complete homework assignments, and even watch an occasional movie. For those that have dial-up service or no service at all, getting access to broadband can be a welcome improvement. And given the way that networks are constructed, delivering 4 Mbps to the very remote homes means that most homes would have access to far greater speeds.

Let's face reality, if we change the standard now, all of the capital, energy and time will be spent upgrading those areas closest to the big cities: the suburbs and nearly rural areas. So guess which areas will not be addressed? The answer is the very hard to reach areas of Idaho and every other state in America. I'm particularly concerned about the impact of changing the speed in rate-of-return territories. Areas that may have been reasonable to serve at the current standard may get left behind altogether if the current providers can't serve them and if there's no backup auction or Remote Areas Fund in place to fill those gaps.

Fifth, Don't Duplicate Broadband Infrastructure

As the FCC implements its various universal service reforms, it needs to do so in a coordinated manner to ensure that funding is not used to overbuild private investment or networks that have been funded through another universal service program. Those limited dollars are better spent connecting *unserved* consumers.

In the high-cost program, the Commission has adopted rules and challenge processes to ensure that Connect America Fund support is not provided to incumbent price cap carriers in areas where there is another provider offering a sufficient level of service. Indeed, the Commission is currently conducting the challenge process in price cap areas. However, we expect that there will be some places that price cap carriers will decline to serve. In those areas, the Commission will conduct a competitive bidding process to determine who will serve those areas and for how much support. That will provide another opportunity to refresh the coverage data. And in refreshing that data, the FCC needs to account for all types of providers. For example, if there are cable providers, WISPs, or CLEC affiliates of rate-of-return carriers providing service in an area that meets our requirements, then those areas should not be eligible for CAF Phase II support. And it's time to take a close look at satellite service to see where it could be used to help fill in gaps in coverage.

The Commission also adopted a rule to phase out support where there's another provider serving 100 percent of the area at or above the requisite level of service. That way, the FCC can direct that excess support to other areas where there is no service for consumers. Unfortunately, the FCC has not implemented that so-called "100 percent overlap rule," in part because it needed time to collect information on providers' study area boundaries and reconcile the data. As soon as the reconciliation process is complete, the FCC should move forward to implement the rule, conduct an appropriate challenge process, and repurpose that support.

Additionally, in the E-rate proceeding, some parties expressed concern that if schools are encouraged to build their own networks using E-rate funding, that could undercut the ability of existing providers to economically serve their entire communities (by cherry-picking anchor customers) and could result in E-rate dollars duplicating high-cost funded networks. At a minimum, schools and libraries should not use E-rate subsidies to become broadband providers outside of their campuses. The recently adopted *E-rate Modernization Order* does not tackle this issue, as it largely focuses on spending reserved funding on Wi-Fi service. But I will be keeping my eye on this issue as the Commission considers next steps and the promised follow-on order.

Sixth, Establish and Stay Within a Clear Budget for Universal Service

This last point may seem counterintuitive to some at first, but it is critical. With clear rules and a known budget, recipients will be better equipped to invest in their networks or request eligible services. The Commission also has a responsibility to ensure that the size of the fund does not grow so large that it imposes an excessive burden on the businesses and ratepayers that ultimately pay into the fund. Consumers are already paying fees of approximately 16 percent on their phone bills to support the increased spending. This is unsustainable.

Unfortunately, the FCC has not yet set an overall budget for the universal service fund and recently decided to tackle the budget issues later. For example, in the recent *E-rate Modernization Order*, the Commission targeted \$5 billion over 5 years for a new Wi-Fi program. Because it's not clear that there will be sufficient funding to meet that target, the Further Notice sought comment on the long-term funding needs for the program. It's entirely possible that a future order will increase the E-rate cap. That

makes it all the more imperative for the FCC to set an overall budget for the universal service fund. Once the cap is raised for one program, there will be calls to raise it for the others.

Moreover, Lifeline remains uncapped today and has become the largest driver of growth in the fund. That's before the Commission decides whether to expand the program to include broadband. I question the wisdom of doing so when there's still more work that needs to be done to stamp out waste, fraud, and abuse. But if the Commission moves forward it must, at a minimum, tighten eligibility requirements, expand document retention requirements, and require a modest contribution from recipients.

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I will wrap this up by thanking you again for inviting me here. It was a pleasure to speak before you. And while I've spent a lot of time talking because I care deeply about these issues, I also want to hear from you. And, of course, I'll be here for the next event, moderating a terrific and timely panel "Filling the GAPS in Broadband Delivery in Rural and Remote Areas."

¹ *Global Internet Traffic Projected to Quadruple by 2015*, CISCO (June 1, 2011), <http://newsroom.cisco.com/press-release-content?jsessionid=9F2A5677FAC60C600EFC7966A7A89550?type=webcontent&articleId=324003>.

² David Dreier & Joshua Meltzer, *Growing the Global Internet Economy by Ensuring the Free Flow of Data Across Borders*, BROOKINGS (May 23, 2013), <http://www.brookings.edu/blogs/up-front/posts/2013/05/23-growing-global-internet-economy-dreier-meltzer>.

³ Susannah Fox & Lee Rainie, *The Web at 25 in the U.S.*, PEW RESEARCH CENTER, at 4 (Feb. 27, 2014), http://www.pewinternet.org/files/2014/02/PIP_25th-anniversary-of-the-Web_0227141.pdf.

⁴ *Global Internet Traffic Projected to Quadruple by 2015*, *supra* note 1.

⁵ US Telecom, <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment> (last visited Aug. 14, 2014).

⁶ US Telecom, <http://www.ustelecom.org/broadband-industry/broadband-industry-stats> (last visited Aug. 14, 2014).

⁷ *Id.*

⁸ *Id.*

⁹ National Broadband Map, <http://www.broadbandmap.gov/summarize/nationwide> (last visited Aug. 14, 2014).

¹⁰ *Id.*

¹¹ Richard Bennett, Luke A. Stewart & Robert D. Atkinson, *The Whole Picture: Where America's Broadband Networks Really Stand*, THE INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION, at 5 (Feb. 2013), <http://www2.itif.org/2013-whole-picture-america-broadband-networks.pdf>.

¹² Comments of the Wireless Internet Service Providers Association, GN Docket. No. 14-28, at 3 (July 16, 2014) <http://apps.fcc.gov/ecfs/document/view?id=7521632599>.

¹³ Alistair Barr & Andy Pasztor, *Google Invests in Satellites to Spread Internet Access*, WALL ST. J. (June 1, 2013), <http://online.wsj.com/articles/google-invests-in-satellites-to-spread-internet-access-1401666287>.

¹⁴ Patrick Nelson, *A New Breed of Broadband Satellites Could Have You Living on a Desert Island*, NETWORKWORLD.COM (July 23, 2014), <http://www.networkworld.com/article/2457722/service-providers/a-new-breed-of-broadband-satellites-could-have-you-living-on-a-desert-island.html>; see also Caleb Henry, *Iridium to Select Manufacturing Partners for Iridium Next Products by End of 2014*, SATELLITETODAY.COM (July 25, 2014), <http://www.satellitetoday.com/regional/2014/07/25/iridium-to-select-manufacturing-partners-for-iridium-next-products-by-end-of-2014/>.

¹⁵ *ViaSat Exede Internet Service Tops FCC Report for Second Consecutive Year*, YAHOO! FINANCE (June 18, 2014), <http://finance.yahoo.com/news/viasat-exede-internet-tops-fcc-180800715.html>; see also FCC, *2014 Measuring Broadband America Report on Fixed Broadband Report—A Report on Consumer Fixed Broadband Performance in the U.S.*, at 12 (July 2014) <http://data.fcc.gov/download/measuring-broadband-america/2014/2014-Fixed-Measuring-Broadband-America-Report.pdf>.

¹⁶ National Broadband Map: Idaho, <http://www.broadbandmap.gov/summarize/state/idaho> (last visited Aug. 15, 2014).

¹⁷ Zach Kyle, *Treasure Valley's Fiber-Optic Cables Need Better Network*, IDAHO STATESMAN (Mar. 19, 2014), <http://www.idahostatesman.com/2014/03/19/3086343/a-fibrous-future.html>.

¹⁸ National Broadband Map: Idaho, *supra* note 16.

¹⁹ Akamai's *State of the Internet Report, Q1 2014*, at 19 (David Belson ed., 2014), http://www.akamai.com/dl/akamai/akamai-soti-q114.pdf?WT.mc_id=soti_Q114.