

**Remarks of Commissioner Michael O’Rielly  
At NTCA’s Telecom Executive Policy Summit  
October 27, 2014  
(As prepared for delivery)**

Thank you, Shirley, for inviting me here today. NTCA is strong voice for rural America, and you've put together an impressive and timely agenda for this conference, covering everything from the Connect America Fund and E-rate to IP transitions and mergers.

Over the past several months, I've had the opportunity to travel around the country and meet with a number of small carriers serving very rural and remote parts of America—places like Idaho, Alaska, Kansas, and South Dakota. It was a privilege to hear from them and learn of their unique perspectives. It is also helpful to participate in events like this, which enable all of us to exchange ideas and best practices, as well as to plan for future policies and investment in rural America.

We need these discussions now more than ever. As you have recognized, we are at a critical policy juncture. The Commission has begun to reform—albeit slower than I would like—all of the universal service programs, but the hardest issues remain unsolved. And at the same time, new technologies are forcing us to rethink how we regulate communications generally.

In the face of change and challenge, some may be tempted to throw up their hands. But I think it is critical to move forward with our reforms. That doesn't mean that I've come here today with a magic solution or the answers to all of your questions. I recognize that every major reform that has worked has succeeded in part because you all helped shape it.

So to paraphrase one of Shirley's great blog posts, we need to climb the mountain, and I am prepared to climb it alongside you. In fact, I'll be the one dragging and pushing if you try to stall or dawdle. We may not agree on every step of the path, but I am willing to put in the hard work and listen to your thoughts and concerns along the way.

There are three basic points that I want to make today: (1) the future is broadband and this means change; (2) action by the FCC is necessary and appropriate; and (3) consumers will benefit from modern infrastructure and regulatory treatment.

**The Future is Broadband and This Means Change**

I know you are all well aware that the future is broadband. As Shirley recently highlighted, “NTCA’s small, rural network operators have been at the forefront of innovation and technological evolution for decades, deploying IP and other advanced technologies to provide broadband access to over 90 percent of the consumers in their coverage areas.” And your recent survey showed that your overall take rate for broadband service is 72 percent, an increase from 69 percent in 2012.

The bigger issue is how companies will adapt to changes in the marketplace resulting from the introduction of new technologies, services, and applications, and in response to shifting consumer preferences. Let me be clear in reminding everyone: carriers do not own nor is there any guarantee to

receive universal service support. It is ratepayer money. In other words, it is American consumers' money that the FCC is entrusted to invest wisely.

To remain competitive and relevant, companies need to find efficiencies wherever possible. The days where each town had a carrier with its own board and assets may be coming to an end except in the most remote areas. I am encouraged to see that you will be exploring ways to join forces with other carriers or obtain assets from others that are less interested in serving rural America. I do not promote or seek consolidation, but there must be a realization of the marketplace.

I'm also glad that you will be discussing policy barriers to combinations. I would be interested in hearing any that you identify. We've seen, for example, that our high-cost rules may encourage some carriers to "stay small" even if they would prefer otherwise, or to preserve separate study areas in order to maximize support even if it's not truly needed. While each company needs to make its own business decision about how it will proceed in this changing marketplace, if there are FCC or state policies or rules that are creating the wrong incentives, then I would like your input on what they are and how to change them.

### **Action by the FCC is Necessary and Appropriate**

Just as all of you are looking ahead to the future, so too must the FCC. It is imperative that the agency decide key policy issues that will impact investment decisions for years to come. In other words, action by the FCC is necessary and appropriate. And we need to act soon.

I know you have been waiting on a Connect America Fund (or "CAF") for rate-of-return carriers. That is a necessary part of meeting our obligation under the statute to ensure that all consumers have access to *reasonably* comparable services at *reasonably* comparable rates. We also need to complete E-rate reform in a way that ensures sustainable connectivity without duplicating existing networks. And we should remain vigilant on rural call completion so that all Americans receive high-quality voice service no matter where they live.

As we look to the future, we must not be beholden to old rules. For instance, the high-cost and related accounting and separations rules were created back when consumers demanded voice (and multiple lines of it), they bought local and long-distance service (both interstate and intrastate toll), that service was provided over a copper loop (unbonded of course), and more states played a significant regulatory role. Times have changed.

If old rules are frustrating federal USF policy, then they must be revised. I've heard, for example, that there's an old interpretation that's preventing carriers from receiving support when they offer VoIP on a common carriage basis bundled with broadband, even though the *USF/ICC Transformation Order* reinterpreted voice telephony service in order to facilitate those types of offerings. We should take a look at these old decisions to see whether they still make sense today. If we need to be clearer, let's make that happen immediately.

More broadly, I appreciate that you've shown a willingness to put forward solutions that transition away from legacy rules to a broadband-focused CAF. I would prefer to do more to break from the past. For

instance, I'm not supportive of old constructs like SLCs. The goal should be to provide predictable and sufficient levels of support that preserve and advance universal service, not to perpetuate old systems.

I am also pleased that your proposal includes ways to stay within a budget. Without that breakthrough, I'm not sure further reform would be possible. I would caution against trying to tie the budget to inflation, however. There are a number of ways to calculate inflation. The CPI for communication, for example, has been decreasing since 2009. Moreover, there is pressure to enact an appropriate productivity adjustment. Don't think you can get the one without the other.

And I am glad that you are supportive of multiple paths for reform. I, too, am skeptical of one-size-fits-all regulation. We already distinguish between price cap carriers and rate-of-return carriers, and between cost companies and average schedule companies. So if some carriers want to pursue a model or some other form of incentive regulation, then that's worth exploring. Indeed, I would encourage all carriers to at least take a look at the model and see whether it could be workable for their company now or with a discrete set of changes. I recognize that any model will have its limitations, but it may be better for more carriers than you might think. And for those that aren't convinced, we can proceed with a separate path. While creating multiple paths could have some redistributive effects, that seems like a solvable challenge.

As we continue to think through these issues, I do want to emphasize that the Commission has many competing priorities, involving many parts of the communications sector. If we aren't able to come to consensus and act soon, we may lose the window for getting CAF reform done in the near term. And that means living with the current system and its serious flaws.

To this end, I would suggest that it is in your best interest not only to press to get rate-of-return reforms accomplished, but also to push the Commission to complete broader CAF reforms. If the Commission is able to wrap up the challenge process and all other decisions needed to make offers to the price cap carriers by the end of this year, and can finalize the rest of the decisions needed for CAF Phase II in early 2015, then the Commission will have no reason to further delay a CAF for small carriers. I hope I can count on your help on this timeline, and I promise to do what I can to push for rate-of-return reform no later than summer.

### **Consumers Will Benefit from Modern Infrastructure and Regulatory Treatment**

Completing these reforms is well worth the time and effort because consumers will benefit from modern infrastructure and regulatory treatment. And when I say modern regulatory treatment, I don't mean subjecting new technologies, services, and applications to the various Titles of the Communications Act. There seems to be a trend emerging across various proceedings to apply the Act to various parts of the Internet. In fact, I am beginning to wonder whether any part of the Internet will be left untouched.

For instance, the Commission is supposedly considering whether to classify some Internet-based video offerings as multichannel video programming distributors (MVPDs). That is, certain over-the-top (OTT) providers could be brought within the scope of Title VI. This comes on the heels of the Commission

extending text-to-911 rules to “interconnected” OTT text messaging applications and service, and possibly to “non-interconnected” ones in the future.

And then there’s net neutrality. I recognize that you support separating out and applying Title II to a so-called “transmission component” of broadband Internet access service—in part because that is how many of you have voluntarily chosen to offer the service for years, and in part because it could improve your interconnection arrangements with larger carriers and CDNs.

I understand your motivations, but this is one where we will have to part ways. The fact that some providers may *choose* to offer a service a certain way does not mean it is necessary or appropriate to *require* all others to do the same. And just as you judge USF reforms on whether they will negatively impact your investment, I have to consider whether net neutrality proposals will chill access to capital and broadband deployment. I am extremely concerned that applying Title II to any part of broadband or the Internet will have this effect. And it will impact not only last-mile ISPs that own transmission facilities but anyone that uses the service as an input to deliver content across the Internet, including some edge providers.

I’m also troubled by suggestions that the Commission could simply forbear from a host of Title II provisions. There is nothing simple about it. Each party has its own list of provisions that it would and would not want to apply to the service, guaranteeing that there will be protracted legal fights both at the FCC and in court, which will undoubtedly drain resources away from the other reforms you care about. These parties also ignore that the findings one would have to make to justify forbearance run counter to the arguments underpinning net neutrality in the first place. Moreover, the need to forebear from significant portions of Title II proves that this is all just an end-run around the statute. It is frustrating because I support forbearance and we will wreck it as a viable tool if we continue to abuse it.

Finally, I want to leave you with a challenge: to come up with a plan to ensure that rural consumers in extremely high-cost areas are not left out of the benefits of the Connect America Fund and the modern infrastructure it can enable. I suspect the Commission will decide to increase the speed requirements for CAF from 4/1 to 10/1. That means that more of your territories may be deemed uneconomic to serve. That may work from a business perspective, but not for consumers in those areas. How can we reach them? If you can’t provide 10/1 in those areas, will you plan to serve them at 4/1? Are you willing to partner with other providers to offer service on a transitional basis until you are able to fully serve them in the future?

I look forward to hearing your thoughts on this and on all of the important issues before the Commission. I have an open door and I encourage you to contact me or my staff when you are in town. Thank you and I look forward to continuing this conversation.