

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

Re: *Inquiry Concerning the Development of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket Nos. 14-126 and 12-228.

I cannot support today's order announcing the conclusion of the Ninth Broadband Progress Notice of Inquiry under section 706 of the Telecommunications Act (Ninth NOI). I am at a loss to see where in the statute Congress authorizes the Commission to miss a statutory deadline or to conclude an inquiry without making the required determination. To the contrary, Congress could not have made its directions any clearer:

“The Commission shall, within 30 months after February 8, 1996, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and *shall complete the inquiry within 180 days after its initiation*. In the inquiry, the Commission *shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.*” (emphasis added)

It seems that the Commission parses every word of section 706 to try to wring out non-existent authority for questionable or objectionable purposes. Yet, in this instance, it so blithely ignores the *actual* instructions contained in the provision. It is not the Commission's place to decide that “No meaningful purpose would be served by issuing [the] report”

Moreover, it is of no consequence that the Commission did not receive comments on whether the Ninth NOI needed to be resolved. Comments (or the lack thereof) cannot override what the statute itself requires.

Nor is there an exception for when the Commission is really busy. Perhaps instead of devoting its “limited resources” to prophylactic rules addressing hypothetical problems, the Commission should do the jobs explicitly set forth by Congress.

I realize that this problem is mostly caused by a previous Chairman. But we have no right or authority to compound this error in judgment by failing to do as the law requires. A partial solution would have been to incorporate the draft Ninth Report into the Tenth Report, although this still would not rectify the failure to meet the statutory deadline.

For all of these reasons, I dissent.