STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data,* GN Docket No. 15-206

With this notice, we commence a proceeding to transition submarine cable licensees from the current voluntary structure to required outage reporting using the Commission's NORS database. While I understand that we have not collected much information under the voluntary reporting mechanism, there are concerns that we are making proposals and moving in a more regulatory direction with very limited facts. As a basis for regulatory burdens, the cost of which will ultimately be passed on to the American consumer, we are relying on a lack of voluntary filings and one outage that affected the Northern Mariana Islands. I would have preferred to have more information about the breadth of outages before going to the Notice of Proposed Rulemaking stage, so that our proposals would be based on bona fide data.

Although many may think that reporting requirements are not burdensome, they can be. Reports tend to open the door for further regulation, fees and enforcement actions. In fact, this item suggests that one licensee, known as the "Responsible Licensee," would file the outage report, but, if it fails to do so, all licensees using the cable would be accountable and potentially liable. This would apply even if a licensee's actual traffic is not affected. If our goal is that outages get reported, we should have sought neutral comment on the best way to ensure that the information is actually filed.

I am also concerned about the information that the licensees may be required to file. Submarine cables are not like copper, fiber or wireless networks. To diagnose problems, licensees may need to hire one of the limited ships specializing in undersea cables to sail out, haul the cable from the ocean floor and inspect it. Information such as what caused the outage, the location and duration of the outage, and estimated repair time may not be readily available until the ship reaches the cable. The Commission, however, proposes to require such information within two hours of the outage being discovered or when the repair is scheduled. I thank the Chairman for adding questions to elicit when such information tends to be available, but, if this proposal is adopted as is and licensees fail to provide information they cannot reasonably get in such a limited timeframe, the Enforcement Bureau and its quick trigger finger may be knocking on their doors.

This brings me to the cost-benefit analysis. I appreciate the Chairman's willingness to add questions about the start-up costs to implement this reporting requirement, but the Commission needs to do a better job at accounting for contractual negotiations and review processes. While more information is provided than normal, the analysis is woeful and lacks credibility. Hopefully, commenters will set the record straight. For instance, in preparation to file, all licensees may have to confer about whether they have legally met the threshold for a reportable event and, because there is potential liability, each licensee may want to review submissions. This will take a lot more than two hours total per reportable event, and I don't know too many lawyers who charge only $80 an hour.

Not surprisingly, I also have some concerns about the delegation to staff to develop and improve interagency coordination and best practices applicable to submarine cable permits and authorizations. Although staff will report their progress to the Commission, staff must remain within the bounds of their authority and not make any new or novel changes in policies or procedures without Commission approval.

Finally, although I have some skepticism about this proceeding, I will keep an open mind and look forward to engaging with interested parties. But, if we move forward to adopt rules, I hope to see far

more data demonstrating the need for regulation. I thank the Chairman for incorporating other edits and for the efforts of the Public Safety and International Bureaus