

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

I approve the forbearance provided in this item, to the extent it exists. I caution, however, that upon closer reading, it is not the half a loaf that some have proclaimed it to be but more closely resembles a couple of heel portions. In several cases, even when relief is “granted”, the Commission makes clear that it will continue to enforce the obligations through other statutory provisions—the familiar fauxbearance approach made famous by the Net Neutrality fiasco. In the end, I will take the little relief found acceptable to my colleagues but argue that we were required to provide much more.

The petition before us presented an opportunity to break out of a time warp of the old debates and bygone market era of the Telecommunications Act’s earliest days and adopt meaningful relief to enable companies to shift their resources to providing the new technologies and services that consumers are demanding. That is, to fulfill the supposed goals of the tech transitions proceeding. Unfortunately, in several instances, the actual relief in the item is denied or is insufficient.

In particular, the Commission proves once again that it is only willing to forbear when other statutory provisions remain in place that can allegedly accomplish the same objectives or unless there is no evidence that any competitor is actually benefiting from a provision. For example, on section 271, the Commission grants relief from checklist items that duplicate requirements mandated under section 251, grants relief from checklist items that nobody is using, but denies relief from a checklist item that is not fully duplicated by another provision. Now, consider this troubling statement from the item:

Nor has USTelecom established that the continued application of sections 201, 202 and 251 of the Act presents a sufficient basis for forbearance from the remaining section 272 obligations. While other provisions of the Act certainly complement, and may partially overlap, with the remaining section 272 obligations, we agree with [certain commenters] that section 272 establishes protections that are not wholly replicated by any other Act provision or Commission requirement.

If the standard, found nowhere in the statute, is that every provision from which forbearance is sought must be “wholly replicated” by another provision or rule, then the forbearance process has truly become a farce. How is that relief? It doesn’t sufficiently reduce any burden; it just allows for a quick and misleading nod in a vaguely deregulatory direction. In other words, it’s a mixture of obfuscation and indignation to our true responsibility under section 10.

Even worse, petitioners are forced to prove, in detail, exactly how the Commission can continue to regulate them through continued application of other provisions. Some may choose to play along in the hope of at least obtaining some incremental relief. But I expect that their filings will be used against them should they eventually try to seek relief from the remaining regulations.

Also troubling is the lack of consistent analysis in the item. When the Commission plans to deny relief, it is quick to dismiss “bare” or “conclusory” assertions by petitioners. However, when the Commission wants to grant some forbearance, it is prepared to overlook “bald statements” and point to the “totality of the record”. Similarly, in some sections, petitioners are faulted for providing insufficient

data on competition, but in other instances, we are told that persuasive evidence of competition “is not inherently necessary to grant forbearance”. In addition, data used to explain how market developments have “sharply mitigate[d]” prior concerns about dialing convenience was at one point inserted into the draft and then inexplicably removed. For an agency that wants to be an umpire or referee on all types of conduct, this item reaffirms my belief that it has no reliable strike zone and no idea how to call a fair game.

Having found this item generally lacking of what it could or should have been, I inquired about the possibility of granting USTelecom’s long-pending petition requesting that incumbents be regulated as non-dominant in the provision of switched access voice service. It basically has been sitting idle for three years. At my direction, my staff has periodically asked about the status of the petition, including most recently in June of this year. With the petition continuing to languish, I decided to blog about it in the hopes of prompting a decision. When that did not occur, I raised it again in the context of this proceeding given that they are related issues, and sought a path to how or when it would be considered. Doing so would probably lessen my critique of the forbearance item since the two items are completely intertwined. In fact, it is my understanding that USTelecom contemplated including it in its forbearance petition or filing a separate petition.

Alas, not only was my request to act on the petition refused, but my office was informed that the way in which we had raised it was “not appreciated” as if I had shaken some sense of decorum or operating procedures in *this* Commission. Really, this Commission? It’s hard to take seriously such claims of umbrage when this very item initially contained a key decision on the Remote Areas Fund that caught everyone by surprise because it was not necessary to resolve the forbearance petition. Ah, consistency.

Even more troubling, I was told I couldn’t even get answers to two basic questions posed over a week ago, including: when have the additional requirements for dominant carriers made a difference compared to what would have happened under the non-dominant rules. I recognize that staff primarily works on the Chairman’s agenda, but I did not think it would be too much to ask for someone to spend a small amount of time to answer a couple of questions.

In sum, we could have done more on the forbearance petition, and we could have addressed the related non-dominance issue.