

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

Re: Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, PS Docket No. 15-94; Wireless Emergency Alerts, PS Docket No. 15-91.

I recognize that, as we consider this item, many people may have Snowzilla and the drama of last week's commute in mind. Most of us sat in front of our televisions watching the snow accumulate and traffic come to a screeching halt. We got minute-by-minute – or inch-by-inch – updates from our local broadcasters, cable channels and the Internet.

Americans have abundant access to emergency information outside of the Emergency Alert System (EAS). Although EAS has its place, we must remember that the underlying purpose of the Commission's rules is to deliver Presidential emergency alerts – a protocol that, in fact, has never, ever been activated by the President. Not only must we ensure that we do not place unnecessary burdens on states and other EAS participants, but we also need to ensure that the alerts are reliable and not so intrusive or testing so pervasive that people start ignoring them.

As I have often said, the Commission must periodically review its regulations to ensure they are still needed and to modify or update them as necessary. And EAS is no different. Therefore, I am generally supportive of a proceeding to re-evaluate our rules.

I am highly skeptical, however, about some of the issues raised, if they were to be part of any final item. For instance, the ideas about obtaining information on the use of social media and highway signs as part of state emergency plans, some of the testing procedures and outreach measures, and machine-translation technologies for accessibility could result in unnecessarily burdensome rules. I am also concerned that the portion of the order on software-defined EAS networks could lead to duplicative EAS infrastructures and technology mandates. Let's hope the record adequately addresses all of these issues to ensure that the correct balance is achieved and costs are minimized. Our main goal must be an EAS system that works, not a half-baked mandate for inclusion in every communication mechanism.

However, I am most disturbed about those portions of the item that seek, or could be used, to capture the Internet in our EAS rules. For instance, there are questions about whether our requirements should be expanded beyond channels that carry programming, which could possibly capture channels carrying interactive games, the Internet, and Internet access. Further, we seek comment on expanding alerts to “emerging video technology,” which could ultimately be used to impose EAS requirements on over-the-top (OTT) providers, such as multichannel video programming distributor (MVPD) and broadcaster mobile applications, Netflix, Hulu, and others. Had the public seen the first version of this item, they would likely be outraged by how directly it attempted to capture certain OTT services in this morass. Making the language vaguer does not hide its true intentions. Beyond the harmful direction in policy, we have limited statutory authority to regulate the Internet or edge providers, and I will not be supportive of any efforts to do so.

The item also questions whether Wireless Emergency Alerts (WEA) alerts should be expanded to tablets capable of connecting to a wireless provider's network (*i.e.*, 4G LTE-enabled). Many of these lines of inquiry could lead to regulating some services and devices, but not others, opening the door to a mess of regulatory parity problems.

Although the Commission asserts that it is just seeking information on these new technology issues, this is a façade. We have been down this road before. Using the guise of an advisory committee, industry best practices have turned into Commission mandates before our very eyes. We actually use this approach in this very item. This item takes the security measures that are part of CSRIC best practices and makes them *mandatory* by requiring certifications of compliance from EAS participants. It highlights the broken advisory committee process I identified long ago – a problem that is likely to be repeated if the Commission re-establishes the National Advisory Committee with expanded membership and responsibilities.

Finally, the statutory authority and cost/benefit discussions are, once again, sorely lacking. Additionally, I do not agree with the Commission's use of section 706 of the Communications Act, which provides the President the authority, during times of war, to "direct such communications as in his judgment may be essential to the national defense and security," as authority for all of the ideas in this notice. If so, let me see the communications between the White House and the Commission advocating for these changes.

For these reasons, I must dissent in part. I do thank the Chairman's Office and Commission staff for working through some issues and taking a few of my suggestions, however, the edits taken just did not go far enough.