

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

Re: *Transition from TTY to Real-Time Text Technology*, Notice of Proposed Rulemaking, CG Docket No. 16-145; *Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology*, and *Petition for Waiver of Rules Requiring Support of TTY Technology*, GN Docket No. 15-178

The time is long past to dispose of the antiquated 1970s TTY technology. This outdated system has been largely abandoned by people with disabilities in favor of new, commercially available solutions tailored to a world of mobile devices, the Internet and applications. One study shows that only nine out of 49 participants, or 18 percent,¹ regularly use TTY to meet their communications needs, and this seems exceptionally overstating its usefulness given the plethora of other communication technologies. Moreover, this number will continue to decline, because TTY is not truly compatible with wireless IP networks. For this reason, I fully support a proceeding to eliminate the Commission's obsolete wireless TTY requirements.

At the same time, I have serious concerns about the proposal to implement rules to replace TTY with Real-Time Text (RTT) requirements. The same study I just referenced, which the Commission cites in the underlying item, found that 98 percent of the participants regularly communicate using standard SMS text messaging, 69.4 percent use other instant messaging services, and 55.1 percent take advantage of video conferencing applications, among others.² Americans with hearing loss are already huge adopters of existing alternatives that are exceptionally popular among those without hearing loss. In sum, the private sector has created technologies – better known as apps – preferred by people with disabilities and that far exceed the functionality of government-mandated TTY – all without a single regulation. Instead of allowing marketplace solutions to continue to improve the communications landscape for the disabled, the Commission is going to mandate the functionality and design of RTT and require that all mobile devices are enabled with RTT, a technology that has yet to be deployed. While this technology shows promise, regulation is problematic.

Regulation seems even more dubious when large providers have committed to developing this technology – which is of interest to people with and without disabilities – and making it interoperable. But this is just not good enough for some people here at the Commission. Instead, the Commission is prepared to require that wireless providers and manufacturers make this technology a native function in a device or, at a minimum, provide it as a pre-installed application, without any actual evidence that it is truly needed. RTT could be poised to develop into a fully competitive platform to SMS, instant messaging services and video calling applications, or it may fall flat on its face. The Commission's current proposals would clearly pick a favored technology over these others or those yet to be developed. In my mind, that is the very definition of a violation of technological neutrality.

¹ Trace Center, University of Wisconsin-Madison, Omnitor & Gallaudet University Technology Access Program, *Real-time text Interoperability, Status and Field Trial*, at 24 (Dec. 17, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001388386>.

² *Id.* at 26.

The Commission doubles down on its effort to pick technology winners and losers by incorporating a specific standard into our rules as a safe harbor. As I have said many times, I generally oppose technology mandates, even under the guise of a safe harbor and even if it may be permitted (not required) under the law.

To make matters worse, the Commission is asking questions that could dictate the functions and development of RTT. For instance, there are proposals and questions regarding character and text capabilities; quality standards for latency and error rates; abilities to perform simultaneous voice, text and video functions; whether standard interfaces are needed to promote device portability; and should RTT characters, such as emoji, be converted into text to promote backwards compatibility to TTY. This is the Commission, in effect, selecting design specifications for software products.

Many of these ideas seem to exceed the standard of providing functional equivalency for voice communications. In fact, they seem to focus on establishing a principle that functional equivalency means a quality that is better than what is offered to non-disabled persons, a definition and concept not found in the letter or spirit of the law. Additionally, setting standards and mandating technologies appears to go beyond ensuring that equipment and services are accessible and usable by individuals with disabilities. Therefore, I am not convinced of our statutory authority for many of the concepts in this notice. I look forward to engaging with stakeholders on this particular issue.

I am also skeptical that the benefits of such regulation would exceed the costs. And, the costs could expand well beyond the wireless technology mandate. The item also seeks input about equipment subsidies, consumer outreach to ensure that all Americans know about the capabilities of RTT and the transition away from TTY, and extending RTT to wireline systems. On the cost front, if RTT develops as some people expect, maybe we should have taken the time to inquire as to whether TRS funding can be reduced and the program eliminated either in whole or in part. What a novel concept.

Let me be clear, people with disabilities have certain legal protections intended to ensure that they benefit from modern technologies. The problem becomes determining the best means to achieve this goal. In today's world of text, IM and videoconferencing apps, I cannot support the broad conclusory statements that the proposals contained in the item are necessary to ensure that people with disabilities continue to have effective access to wireless communications or that RTT is the only technology that is functionally equivalent to voice. Nor am I convinced that RTT is necessary for disabled persons because SMS is an insufficient means to contact emergency services – an ironic argument when the Commission implemented text-to-911 based on current SMS technologies. And it's why I requested that these statements be converted into questions and that neutral comment be sought on many of the ideas raised in this notice. My request was rejected.

Simply put, I want to ensure that private sector investment and innovation continue to provide communications solutions that make lives easier not only for those with disabilities but for all Americans. This is exactly how we arrived at the functionalities that the disability community enjoys today; many of which will be integrated into RTT. By providing preferential treatment and mandated implementation of a particular commercially-available technology, we will hinder competition, future investment, and the next generation of texting or accessibility offerings. At a minimum, history is bound to repeat itself – RTT or any other mandated service will be surpassed over time, but our rules and the technologies that industry are required to support will remain ingrained in a bygone era, far outliving their usefulness. For this reason, I must dissent in part.