

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

*Re: Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration.*

I have expressed concerns, in the past, about the Commission's reporting requirements,<sup>1</sup> because such reports tend to be gateways to even more costly regulations, even if industry ultimately "agrees" to the requirements. And while I remain skeptical of our Part 4 information collections, and any other efforts that place burdens on industry for the sake of just having information on hand or for such amorphous concepts as "network visibility" and "situational awareness," I am able to concur to today's order portion, because it does help clarify current rules and provides some relief for entities that fall under this reporting regime.

Further, edits that I proposed, along with Commissioners Pai and Clyburn, to ensure that industry has a reasonable time to implement the revised rules were accepted. And, the Chairman's office agreed to require that simplex outages would have to be reported within four days as opposed to three, which will reduce costs for all entities, but especially for small businesses. Additionally, edits were made at my request to those sections of the order and notice regarding the synchronization of the Part 4 reporting structure across all services. While the revised language does not go as far as I had hoped, the notice does seek comment on whether all services should have a two-step reporting requirement, as opposed to just proposing a three-step process.

Regrettably, this is about the only positive thing I can say about the substance of the Further Notice, which I strongly oppose. Yet again, the Commission predictably continues its power grab over the Internet by extending the outage reporting to so-called "Broadband Internet Access Services" (BIAS). From a statutory authority perspective this item represents quite an epic work of fiction. Over eight pages, the Commission uses the kitchen sink approach, invoking the CVAA; Title II, including section 254 implementing the Universal Service Fund; section 706; Title III and others to justify this proposal. Even section 4(o) is bandied about as a rationale for this travesty.<sup>2</sup> If only the Commission used the same level of effort to provide more thoughtful cost-benefit analyses.

Regardless of my well-known disagreement regarding our statutory authority over the Internet, some of the ideas teed up in this notice are just preposterous. For instance, BIAS providers may have to act as a "central reporting point" for outages occurring in Internet services, such as IP transport, that are outside of their control.<sup>3</sup> It even goes so far as to make the outrageous suggestion that BIAS providers should enter into agreements that would enable them to acquire outage information that originates with other providers,<sup>4</sup> who may, in some cases, be their competitor. What is the validity of the Commission "suggesting" revisions to privately negotiated agreements? And how would BIAS providers be compensated for these additional duties?

Generally, it is unclear what the Commission will do with all of this collected information about broadband networks. It seems likely that the Commission plans even more future regulation on the

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<sup>1</sup> See *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data*, GN Docket No. 15-206, Notice of Proposed Rulemaking, 30 FCC Rcd 10492, 10526 (2015).

<sup>2</sup> See *supra* ¶¶ 193-212.

<sup>3</sup> See *id.* ¶ 112.

<sup>4</sup> See *id.*

resiliency and reliability of the Internet, as the language in the notice is quite telling. In the section regarding performance degradation and “general useful availability and connectivity,” which is code for not really an outage, the Commission asks “[s]hould we consider a metric measuring the average relative bandwidth, where providers would compare active bandwidth against the provider’s bandwidth [as] advertised or offered.”<sup>5</sup> Further, in seeking comment about maintaining the confidentiality of these reports, the item states that “this approach of presumed confidentiality may need to evolve as networks, and consumer expectations about transparency, also evolve.”<sup>6</sup> This suggests that this requirement would be used to further bolster the Net Neutrality transparency rule and/or as a means for the Enforcement Bureau to play a game of gotcha.

The notice also inquires into whether reports should include information about “unintended changes to software or firmware or unintended modifications to a database.”<sup>7</sup> Once again, the Commission is trying to edge its way into the realm of cybersecurity, an area where the Commission does not have authority and other agencies, such as DHS, have jurisdiction and already engage with Internet providers about breaches. The Commission should not attempt to use reporting as a backdoor method to insert itself into the cyber debate.

Another utterly ridiculous idea is that providers would have to file an outage report in the case of congestion in either a wireless or wireline network. Yes, congestion, which occurs in fully functional communications networks, would be treated as an actual outage. One of the suggested reasons for this data collection is that such reports would allow the Commission to identify particular equipment that may be susceptible to failure during times of congestion.<sup>8</sup> And, is the Commission going to “suggest” what network components providers should install or which equipment vendors are preferable? A similar theme is encountered in the section discussing VoIP outage reporting, where the Commission suggests that the current reporting regime has resulted in “significant gaps in the Commission’s visibility into such outages and hinders its ability to take appropriate remedial actions.”<sup>9</sup> While the Commission can contact a VoIP and inquire about an outage, is the Commission going to tell them how to fix the problem? This is the ultimate fishing expedition, unglued from rationality or necessity.

Lastly, the cost-benefit analysis contained in this item is dreadful. Not only is the quantitative analysis and comparison of the costs and benefits for the modified and proposed reporting requirements insufficient, but the item summarily dismisses one industry participant’s assessment that it takes 11 to 12 hours to prepare and file an outage report.<sup>10</sup> Frankly, I am more likely to believe the detailed analysis of those who actually file these reports as opposed to the Commission’s ethereal analysis that this only takes two hours.<sup>11</sup> Additionally, the cost-benefit assessments in no way take into account the time and cost of preparing networks and systems for these modified reporting requirements. Is there anyone who believes that it only takes two hours to compile and analyze data, prepare the reports and engage in multiple layers of review to ensure that a report is even required and that it is accurate?

For these reasons, and noting that the issues I raised with regard to the Notice are illustrative of the overall flawed approach, I must dissent in part.

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<sup>5</sup> *Id.* ¶ 136.

<sup>6</sup> *Id.* ¶ 145.

<sup>7</sup> *Id.* ¶¶ 122-128, 164.

<sup>8</sup> *See id.* ¶ 175.

<sup>9</sup> *Id.* ¶ 162.

<sup>10</sup> *See* Comments of AT&T, PS Docket No. 15-80, at 3, 5-9 (July 16, 2015).

<sup>11</sup> *See supra* ¶ 91.