

**Remarks of Michael O’Rielly, FCC Commissioner
Before the New Jersey Wireless Association
October 18, 2017**

I thank you very much for that very kind introduction. It is a true honor to be the keynote speaker at the inaugural New Jersey Wireless Association Deployment Summit. This event combines two things I deeply enjoy: discussing the consumer benefits of wireless services and being in New Jersey.

I must admit that I spend far more time in New Jersey these days than in my beloved Western New York. My wife grew up here and her family is just a few towns over by the ocean. I’ve come to love New Jersey’s scenery, greenery and availability of in-law babysitting. When you have a toddler in the terrible twos, as I do, you tend to fall in love with anything or anyone that provides some temporary relief. It’s also why I thank the Almighty on a regular basis for the geniuses that created Sesame Street and the lovable Muppets. True story: I think my daughter’s first words were Ma Ma, Da Da and Elmo . . . And not necessarily in that order.

On a more serious note, I sincerely applaud your association’s passionate defense and advocacy before various government and industry bodies. The reason I am here today, and partially why I have spent so much time on 911 fee diversion, for example, is because of this association’s work to bring the scope of the problem in New Jersey to my attention many months ago.

There has been a considerable amount of discussion lately regarding the First Amendment to the U.S. Constitution. This has been both incredibly uplifting and completely demoralizing. Somehow lost in the shuffle is a key component of our overall rights reaffirmed in the First Amendment: the right to petition the Government for a redress of grievances. Without such protections, the American people would be at the complete mercy of government and potentially prohibited from seeking policy improvements, corrections, or additions. So, I want you to know that I appreciate your work. Your efforts are more than just protected, they’re respected.

The Wireless Industry & FCC

I suspect that I won’t have to convince this audience that it is an exciting and challenging time to be part of the wireless industry. Currently, there is an unprecedented consumer demand for your products and services, especially data. Consider the FCC’s latest Mobile Competition Report that highlights industry developments: there are almost 400 million connections, a healthy five percent increase from 2015, and data usage has soared to 13.7 trillion MB (that’s with a T), a 42 percent increase from the prior year and a whopping 238 percent increase from just two years ago. On an individual basis, monthly consumer data use is up 39 percent since 2015 and over 50 percent of the American public has gone completely wireless.

With all this good news comes the realization that the wireless industry is under enormous competitive pressures. The same FCC data shows consumer prices, by one measurement, have fallen by seven percent in one year’s time and the cost of a Megabyte, according to another source, has dropped from \$1.37 to less than half a cent over the last decade. To put that in perspective, annual inflation has increased in the last five years by 4.5 percent, while wireless inflation has dropped by eight percent. At the same time, network investment and overall speeds have increased substantially. By all accounts, your skeptics have been forced to acknowledge these positive developments for consumers, even if they loathe to utter the words “effectively competitive.” But, I dare you to find another communications

industry segment — or commercial segment for that matter — that has produced so many consumer benefits, while experiencing price reductions and fierce competition over the last many years.

I'm sure that those that love to regulate will try to make the weak case that the status of the wireless industry occurred because of — and not despite — the FCC's regulations, particularly our Net Neutrality burdens. Beyond being desperate to validate their myopic decision, this argument completely ignores the counterfactual, or what would have occurred absent such burdens. The reality is that had the Commission rejected the liberal mantra of Net Neutrality, the entire wireless picture could have been even better.

9-1-1 Fee Diversion

The enormous successes of the wireless industry, not just over the last couple of years but the last many decades, has been greeted with attempts by creative state, local and tribal governments to target this success to fill their own coffers. Nowhere is this more apparent than the diversion of 9-1-1 fees by state governments. In my opinion, it is unconscionable that some states divert fees collected for legitimate and needed 9-1-1 communications capabilities to unrelated purposes, threatening the public's safety for short-term budgetary relief. In fact, I think we should call this practice what it really is: stealing. State governments are stealing their citizens' hard-earned incomes under the premise that they're being used for public safety officials.

Despite the intended purposes of 9-1-1 fees, some states have diverted these resources to non-related or, worse yet, non-public safety purposes. The latest annual FCC report found that eight states and one territory diverted almost \$220.3 million from 9-1-1 functions. These states — Illinois, Iowa, New Hampshire, New Jersey, New York, Rhode Island, Washington, West Virginia and the territory of Puerto Rico — were found to have diverted approximately 8.4 percent of the total nationwide collections. The actual story, however, is much worse for residents in certain states. In New York, Rhode Island and New Jersey, the diversion rates were 42 percent, 68.4 percent and 89.9 percent, respectively. But, I'm not telling you anything that you don't already know: New Jersey is the leading diverting state, and I understand that there has been talk of making it even worse.

Some people argue that this is not a real problem because diverting states generally maintain reserve balances to pay operating costs as needed or that the entire issue will take care of itself naturally once the economy improves. Even if a state is just diverting current collections because it maintains positive balances in an existing account, the diversion generally prevents new investment in costly, future networks, as states don't want to deplete their accounts in total. In other words, just paying to maintain older, outdated networks does not allow for growth, advancement or new technologies. Yet, significant investment — not just maintenance — is going to be necessary to develop and implement NG9-1-1.

I certainly understand why some see this as a vexing problem to solve because it intertwines tax policy, jurisdictional lines, federalism, public safety, and consumers. However, it is precisely these types of issues that we expect our policymakers in government to address. Accordingly, not too long ago, I put forward three non-mutually exclusive ideas for the Commission to increase the pressure and force states to end this practice: (1) the Commission retains the right to bar diverting states from imposing 9-1-1 fees on interstate services, meaning a good percentage of wireless services, landline voice services and all VoIP services, at least in my opinion, would be off limits for such state coffers; (2) like it has done in other areas, the Commission can prevent communications providers from including misrepresentations or inaccurate information in requisite consumer bills, thus we could effectively

prevent providers from collecting such funds or require them to remit the funds to diverting states; and (3) the Commission can and should exclude any person representing a diverting state from participating on an FCC advisory committee.

I don't mean to suggest that these are the only ways to resolve this problem. Perhaps there are other ways or ideas you may have that are worthy of consideration. In addition to Commission options, Congress has full ability to correct diverting states' practices either by directly applying existing law or by exerting necessary leverage via its extensive grants and funding regimes.

Let me end my discussion on this issue by painting a picture: on a daily basis, we ask our nation's public safety officials to risk their lives on behalf of their fellow Americans. They run into burning buildings, stand in the line of fire, provide our loved ones' emergency care and perform countless other acts of bravery. The thanks some of these heroes get for their efforts is the siphoning off of needed resources intended to ensure that their localized 9-1-1 systems are as modern as possible.

Unified Wireless Emergency Number

Switching gears a bit, this seems like a great forum to discuss the possibility of unifying the alternative emergency wireless numbers used throughout the nation. If you travel the Northeast corridor via car, as I did this morning, you will see signs for multiple wireless numbers to dial for numerous critical situations, including aggressive driving and DUIs. Pound 77 in Virginia, Maryland and New Jersey; Star 47 in North Carolina; Star 77 in Massachusetts; and Star 11 on the Pennsylvania Turnpike. There's also Star 847 in Tennessee, Pound 4357 in Wyoming, Star 55 in Oklahoma and Star 482 for parts of Kansas, just to give some examples. My point is that, depending on where a person physically is at the moment, the mobile telephone number to report critical situations may be different.

This raises a host of questions. Why do we force the American public to remember these different numbers or read a roadside sign while driving along the highway? Are these numbers being used effectively to shift some vital mobile emergency traffic away from the 9-1-1 calling centers? Would a unified number be beneficial to wireless consumers, public safety officials, and even wireless providers? If so, what prevents the development and deployment of a unified number?

To some degree, these are rhetorical questions in my opinion – or I wouldn't be raising this matter with you today. We used to have a similar issue with regards to the larger public safety emergency numbers until Congress and the emergency communications community agreed to set 9-1-1 as the official emergency number. Why wouldn't the same arguments that led to that decision apply here? The simple answer is that they should. We should have a unified wireless number for non-9-1-1 calls.

In terms of the difficulty in changing the status quo, it seems that there are a couple of necessary steps: (1) get the appropriate entities into a room to agree on an acceptable, unified number; (2) partner with our wireless providers to determine the appropriate timing to execute the technical reconfigurations; (3) work with state transportation departments to update their signage; and (4) educate the American public. Maybe there are a couple of steps I missed but nothing is insurmountable. So, my last question on this topic: could this be something that the NJ Wireless Association would be willing to take the lead or work with me to effectuate?

Wireless Infrastructure Deployment

Finally, let me turn to one of the focuses of this Summit, namely, wireless infrastructure deployment. The Commission is well aware that industry is facing numerous challenges to install the hundreds of thousands of new wireless towers and antennas that are going to be needed to meet the insatiable demand for mobile services and new wireless technologies, such as 5G. To effectuate this, these towers and antennas must be installed throughout American communities, which to date has generated improper and unacceptable behavior by some state, local or tribal governments.

In particular, the Commission's extensive record demonstrates that industry is experiencing excessive delays and moratoria when filing siting applications for access to locality rights of way. In fact, the record is replete with reports of long pre-application processes before an application can be filed or is deemed complete and applications going through two years or more of review before a decision is actually made. For instance, one company reports that, in Florida alone, there are 26 jurisdictions that have installed moratoria. While most of these moratoria last for more than 180 days, in the case of at least two localities, the moratoria extended more than two years. Permitting applications are being rejected for indefensible reasons, such as aesthetics, radiofrequency concerns, or because localities don't agree with the proposed type or placement of equipment.

Finally, providers are being forced to pay astronomical fees for approvals, which is unsustainable when thousands of small cells, generally the size of bread boxes, will need to be deployed. Providers report that they are paying not only large one-time application fees, but also franchise, use, contractor and even annual fees. For instance, we have seen some localities charge as much as \$5,000 or \$10,000 per site to review antenna structure applications and agreements. Some localities charge for the consultants reviewing siting applications, which can be \$8,500 per pole with additional inspection fees after installation. Some also charge recurring yearly fees of \$6,000 per pole, while others take a percentage of gross revenues.

These are not acceptable responses to new small cell technologies that need to be deployed for the U.S. to maintain its position as the leader in wireless communications. Sadly, the real loser in all of this is the consumer, who must wait longer for access to new technologies, like the Internet of Things. The Commission has three open proceedings about facilitating infrastructure installations, and the Chairman has also instituted the Broadband Deployment Advisory Committee to examine and resolve these types of issues. If this situation is not resolved quickly and satisfactorily, the Commission must be willing to use its preemption authority against those governmental entities.

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I'll conclude my remarks there and state that it has been an absolute pleasure to be with you today at such a lovely setting. Perhaps next time I'll bring my golf clubs and show you what having a two-year-old does for one's golf game. On second thought, no one wants to see that.

Thanks again for your hospitality and I wish you well for the rest of your summit. But before I depart, I did want to offer a chance for anyone to ask any questions they may have.