Statement of Michael O'Rielly, FCC Commissioner
Before the Senate Committee on Commerce, Science, and Transportation
"Oversight of the Federal Communications Commission"
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Thank you, Mr. Chairman, Ranking Member Nelson and the Members of the Committee for the opportunity to deliver testimony to you today. I have always held this Committee in the highest regard given my past involvement, as a Congressional staffer, with oversight hearings and legislative efforts to reauthorize the Commission. Not only did these experiences afford me the opportunity to work and form friendships with a number of the Committee staff on both sides of the aisle, but I am also well aware of your responsibilities and the challenges of conducting Congressional oversight. I recommit to making myself available as a resource if I can be of any assistance to the Committee in the future.

In my time at the Commission, I have enjoyed the many intellectual and policy challenges presented by the innovative and ever-changing communications sector. In addition, I have appreciated the opportunity to meet and work with many of the Commission's dedicated public servants, including my colleagues here today. It is my goal to maintain friendships even when we disagree, and seek out opportunities where we can work together. To provide a brief snapshot, I have voted with the Chairman on approximately 90 percent of all items. Unfortunately, this percentage drops significantly – to approximately 62 percent – for the higher-profile Open Meeting items.

One of the policies I have not been able to support is the insertion of the Commission into every aspect of the Internet. As you may have heard, the Commission pursued an ends-justify-the-means approach to subject broadband providers to a new Title II regime without a shred of evidence that it is even necessary, solely to check the boxes on a partisan agenda. Even worse, the order punts authority to FCC staff to review current and future Internet practices under vague standards, such as "just and reasonable," "unreasonable interference or disadvantage" (i.e., the infamous general conduct standard), and "reasonable network management." This is a recipe for uncertainty for our nation's broadband providers and, ultimately, edge providers. Additionally, the Commission has gone down a path of no return by allowing this Administration to have undue influence over its decisions, which undermines confidence in our ability to produce fair, unbiased and reasoned outcomes. Other countries follow the actions of the FCC, and this decision is likely to sway the positions of our international regulatory counterparts in international fora.

Nonetheless, I continue to suggest creative ideas to modernize the regulatory environment to reflect the current marketplace, often through my public blog. I have written extensively on the need to reform numerous outdated and inappropriate Commission procedures. For instance, I have advocated that any document to be considered at an Open Meeting should be made publicly available on the Commission's website at the same time it is circulated to the Commissioners, typically three weeks in advance. This fix is not tied to the net neutrality item, although I think it provides a great example of why change is needed.

Under the current process, I meet with numerous outside parties prior to an Open Meeting, but I am precluded from telling them, for example, having read the document, that their concern is misguided or already addressed. I can't tell them anything of value. This can be a huge waste of time and effort for everyone involved, and allows some favored parties an unfair advantage in the hunt for scarce and highly prized information nuggets. Ultimately, it prevents the staff from focusing on the real issues and improving the text of an item. The only solution, in my eyes, is greater transparency by the Commission,

and I have suggested a way to accomplish this consistent with current law. The stated objections to this approach, presented under the cloak of procedural law, are really grounded in resistance to change and concerns about resource management.

In addition, the Commission has a questionable post-adoption process that deserves significant attention. In particular, items approved at a Commission meeting can then be changed by the Commission staff after the meeting to make or strengthen arguments in response to Commissioner dissents or additional industry filings to improve the Commission's potential litigation position.

While I generally refrain from commenting on legislation, I appreciate the ideas put forth by Senators Heller and others, which would address these and other Commission practices, such as the abuse of delegation, that lock the public out of the critical end stages of the deliberative process. I believe that these proposed changes, as well as others, would improve the functionality of the Commission and improve consumer access to information.

Separately, I have also been outspoken on many substantive issues, such as the need to free up spectrum resources for wireless broadband, both licensed and unlicensed. I was pleased to work with my colleague, Commissioner Rosenworcel, and share our thoughts on how to expand opportunities for unlicensed spectrum, especially in the upper 5 GHz band. I applaud Senators Rubio and Booker for their continued leadership on looking for ways to increase access to this band for Wi-Fi use. Additionally, I have put forward substantive suggestions for the Lifeline program. I recognize that several of my colleagues are interested in expanding the program to include broadband, and I have put forth ideas on how to ensure that any expansion fits within a reasoned budget and does not result in new waste, fraud, and abuse. I look forward to working with my colleagues on this and other issues in the coming months.

I stand ready to answer any questions you may have.