

**Remarks of FCC Commissioner Michael O’Rielly
Before the ACA Connects’ 26th Annual Summit
March 20, 2019**

Thank you for that very kind introduction. It is a distinct pleasure to join you here – now three years in a row – to discuss important communications matters facing your industry and the Federal Communications Commission. I must admit that, despite the constraints on my schedule, I make it a point to return year after year to your conference because I value your receptivity, and it leaves me with a fresh perspective on how to do my job a bit better.

Some of you may be familiar with former Minnesota Vikings Coach Bud Grant, who once said, “If you talk, you only repeat something that you already know. But if you listen, you may learn something that you don’t know.” Similar quotes have been attributed to the Dalai Lama and writer J.P. McEvoy, but whoever said it first, there is a great deal of truth to this sentiment. In this spirit, I hope to leave time for a robust question and answer portion to address your specific policy concerns and to learn from you. But first, and at the risk of completely violating their principle, I’ll start with some general remarks that hopefully won’t bore you too much. So, let’s get started.

Broadband Deployment

One of the top priorities of this Commission is to ensure that all Americans have the opportunity to obtain broadband access. Chairman Pai and others have often referred to this as closing the digital divide. I haven’t been as focused on the phrasing as I am on solving the problem. Suffice it to say, there is strong belief in and support for robust broadband existing nationwide, to give all Americans the chance to have at least a basic level of service. Making this happen, however, requires some difficult decisions and, oftentimes, a lot of hard work.

Those who have followed the Commission’s activities have seen multiple items and efforts brought forward for this purpose. From constructing, reforming, and operating more efficient subsidy programs, to installing regulatory flexibility for operators, to striking the byzantine regulatory straightjacket of so-called “net neutrality,” this Commission has taken necessary actions to facilitate nationwide broadband deployment by the private sector. Of course, more needs to be done, but considering the starting point and where we are today, it is fair to say the Commission is on the right path.

In reality, the Commission plays a small role in improving broadband deployment. The heavy lifting comes from broadband providers, like you, who are willing to put capital at risk, build out your respective networks, and serve those within your area. Many of your companies have invested heavily to meet the immediate and long-term commercial and consumer demand for broadband speeds and capacity, despite a vastly changing marketplace and revenue streams.

Alas, no good deed goes unpunished, as you have been under constant attack by those pointy-headed liberal advocacy groups hellbent on driving profit margins to zero—or even worse—and who at the same time promote below-cost, government-sponsored and operated networks to compete against your businesses. You haven’t received the appreciation that you deserve for all that you’ve done and will do. Well, I am here to reverse the trend and extend my heartfelt thanks to you and the employees of your companies who are making broadband deployment a priority and a reality. Cable and broadband companies of all sizes, especially those small and medium ones, are critical to delivering

greater broadband access across the country. I recognize that this has been done by industry leaders with greater stomachs for failure and more grit to get the job done than most could ever imagine.

At the same time, there is a real risk that the federal government – outside the decisions of the FCC – could make your job much harder or make it nearly impossible for you to survive and thrive in the marketplace. Specifically, new federal money allocated by Congress to facilitate broadband deployment has the chance, and dare I say likelihood, to be used to fund other providers to overbuild areas where you serve. In other words, federal monies could be used to bring an artificial, subsidized, government-blessed competitor to overbuild your network. This is much worse than a lack of coordination among government agencies or, in other words, the right hand not knowing what the left hand is doing; instead, it amounts to government agencies actively harming privately funded broadband deployment, or the left hand cutting off a few necessary fingers of the right. While this is by no means a new phenomenon—as we saw firsthand with economic stimulus funding in the Obama Administration—we know that it’s a credible risk given the new flow of money and the potential for more on the horizon.

This is why I have repeatedly pushed to ensure that any new broadband funding is not used for overbuilding areas that currently have service. This is especially crucial when the *unserved* need is so great. In addition to testifying before Congress, writing letters to department heads, and generally banging the drum opposing overbuilding, I also have talked to Members of Congress to raise specific concerns and ways to prevent it from occurring. ACA has joined me in this effort, and I appreciate Matt’s recent congressional testimony on the topic. Your continued vigilance and engagement will be needed to prevent scarce funding from being abused and misused.

Deregulatory Efforts

Switching topics, sometimes it seems as though ACA’s first three regulatory and legislative priorities are Retrans, Retrans, and Retrans. While I understand its importance, there is only so much the Commission can or should do on the topic. So, I have tried to spend my time pushing reforms to the existing statutorily- and Commission-imposed mandates on the cable industry. On point, in my last few visits to the ACA conference, I respectfully asked this audience to give me your small to medium ideas on media modernization, and I agreed to make a solid attempt to enact those meritorious and justifiable reforms. And this Commission has done just that. The FCC has been committed to removing existing Commission rules and regulations that no longer make sense in the current competitive media environment. And, we have more items in the pipeline awaiting Commission action. But now it’s time for more substantial reform to be done at a far quicker pace than previously imagined.

Let me suggest to you that the entire government oversight model for video services needs a complete overhaul from top to bottom. The changing marketplace for video services has eviscerated many longstanding principles and more evolution is expected in the next few years. Consider that over-the-top (OTT) providers affiliated with programmers, which already have considerable market penetration, advertising revenues, and consumer adoption, have accelerated their efforts to sell video programming directly to consumers, bypassing distributors and eating away at your video margins. That means that except for the top one or two video providers, the days of selling traditional programming packages are evaporating, with little likelihood of returning. Some providers have already stopped offering video services altogether. To put a finer point on it, we are now at the point where the OTT marketplace is already maturing, which is likely to result in consolidation and aggregation within the so-called FAANGs, or Facebook, Amazon, Apple, Netflix, and Google.

So, what does this all mean for you and your businesses? These radical changes should compel a fundamental recalibration in your relationships with local franchise authorities. The reality is that all this change is likely to force them to be even more aggressive in searching for fees, taxes, and add-ons. And it is going to motivate a whole host of creative franchise authorities to go rogue. Such bad behavior and practices cannot be permitted.

Having long ago called for a rewriting of the requisite title of federal law governing video services, I would argue that the Commission has the more urgent obligation now to identify issues with respect to which local franchise authorities should be appropriately preempted by federal law. Our section 621 in-kind proceeding should be the start and not the end of our activities. For instance, why should a local franchise authority be allowed to scrutinize mergers, transactions, modifications, or even renewals with the goal of enacting new or renewing old fringe benefits, especially if traditional video services are dissipating? How can local franchise authorities obligate the use of certain accounting practices or practice rights-of-way discrimination? What reasoning can be found to continue PEG channels or institutional network mandates? It's extremely unlikely that any of these burdens will ever be applied to OTT providers, and therefore they serve as discriminatory burdens and create unfair market distortions.

C-Band Proceeding

On my last point, I am well aware that the so-called C-band proceeding is of importance to ACA members. You should know that this issue isn't being considered to make your lives difficult, but because, simply put, there is near universal agreement that this is the best and largest swath of mid-band spectrum available for 5G services. I became a lead advocate for this reallocation because it became obvious, over two years ago, that there was a global shift towards mid-band spectrum for 5G networks. Adding these frequencies to the adjacent 3.5 GHz band, and hopefully spectrum at 3.4 GHz, will provide the necessary foundation for 5G in the mid bands.

Some of you may have heard that I discussed this very topic with some of your very good friends, the local broadcasters, about a month ago. I will make the same commitment to you as I made to them: if you don't get greedy or seek unfair enrichment in the reallocation, your concerns will have to be fully addressed.

At this point, I don't believe that there is much question as to whether there will be a reallocation of C-band spectrum. The open issues pertain to the appropriate mechanism and time frame to make the process happen. I ask that you keep an open mind and work with the Commission to bring this to a speedy conclusion. The record includes various proposals that may not be as detailed as you would like, and I understand that this may cause apprehension. For instance, many have asked for greater specifics about how the "market-based" or C-Band Alliance proposal can protect incumbents. Those details will have to be fleshed out if or when the Commission moves forward with that or a similar approach. The key is not having a knee-jerk reaction in opposition while the complex issues are being considered and resolved.

The good news is that this item may provide your companies with an enormous opportunity. While some of you may not be planning to be active in acquiring spectrum at market, most – if not all – of you offer Wi-Fi. Clearing C-band spectrum at 3.7-4.2 GHz will need to be accompanied by efforts to expand unlicensed services into the corresponding uplink band at 6 GHz. This spectrum, along with 5.9 GHz, provides the best chance to expand current Wi-Fi and other unlicensed operations. It will allow those of

you who want to grow or introduce wireless offerings to do so without the expense of purchasing spectrum at auction.

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That's a lot of talking from me, and in an effort to actually honor the words of Bud Grant, the Dalai Lama, or J.P. McEvoy, I'll stop there and let the interactive portion begin.

Thank you all for your hospitality, and I wish you well for the rest of ACA's Summit.