

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Rural Call Completion*, WC Docket No. 13-39.

Americans expect their calls to be completed no matter where they live. So the FCC has worked hard to better understand and reduce rural call completion problems. These efforts have ranged from Declaratory Rulings and enforcement actions to the latest endeavor, contained in the 2013 Report and Order and Further Notice of Proposed Rulemaking, to collect more data and seek further comment. I commend and support these efforts.

I must concur with today's Order on Reconsideration, however. While the FCC should root out call completion problems, it should not take procedural and legal shortcuts along the way that undermine the agency's credibility across proceedings. Unfortunately, I can point to several examples in this Order.

For instance, the Order brushes aside Sprint's concern that the Commission did not make certain surveys available for independent review. The Order notes that the surveys were only one piece of information that the Commission relied on when adopting its rules. While the Commission may have the right to reject the Sprint petition, the better practice would have been to make such information available, by protective order if necessary, to protect any information that was truly confidential. When our decision-making isn't transparent, our decisions become suspect.

The Order also dismisses COMPTEL's and ignores Carolina West's concerns about whether the Commission provided sufficient notice for the adopted rules. The Carolina West petition notes that the Commission failed to explain why it changed the proposed definition of "covered providers" to include affiliates. Indeed, the word affiliate does not even appear in the underlying Notice. I expect the Commission to seek targeted comment during a proceeding to shore up any possible notice deficiencies instead of having to rely on "logical outgrowth" or other procedural defenses after the fact. I tend to find the argument presented by Carolina West persuasive and carriers now captured by our rules should not be forced to pray that a waiver is granted, as is suggested. I suspect that we could exclude such carriers without undermining our rural call completion efforts.

Moreover, I continue to object to the cursory cost-benefit analyses contained in Commission orders. It may be the case that the benefits of these rules outweigh the costs, but it is hard to tell from the few paragraphs cited in the underlying item. To be sure, those paragraphs discussed important steps the Commission was taking to shrink the scope of the rules. But they make no attempt to quantify the costs of the rules or to quantify and compare the benefits. By a series of Executive Orders, agencies, including independent agencies like the FCC, are supposed to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its cost" and must "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." This is not being done at the Commission.

I also disagree that the Commission should rely on the Paperwork Reduction Act process—i.e., something that occurs after I have been asked to vote—to sort out the costs and benefits. I need to make decisions based on actual (not "to be determined") estimates of costs and benefits. Conducting the analysis after the fact also risks needless delay because the FCC may have to change its rules to address Office of Management and Budget concerns that the FCC has placed undue burdens on providers.

Finally, while not directly addressed in today's Order, I am concerned by the trend of invoking ancillary authority to extend common carrier style regulation to an increasing array of providers and services. The Transcom petition, while dismissed on procedural grounds, raises a host of issues that need to be considered fully. Ancillary authority should be exercised with extreme caution (if at all) because it

arises, by definition, only in cases where Congress did not provide the FCC with express authority to regulate. It should not be used to force other providers to abide by “industry practices”.

While I can only concur with this particular Order, I fully support the underlying goal of ensuring that all consumers have access to high-quality telephone service, and I hope we can continue to make progress to that end.