

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND CONCURRING IN PART**

Re: *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 16-245.

Like last year, I approve issuing this Notice of Inquiry pursuant to Section 706 of the Telecommunications Act of 1996. Having better data and soliciting the views of interested parties on the state of broadband deployment and the deregulatory ways to improve it – if done in a neutral way – could be helpful to our overall obligations at the Commission. In a number of instances, however, the text of this item strays from that role and, therefore, I can only concur with those portions.

Take for instance the notion of an “aspirational threshold” of broadband speed. Such a concept is contained nowhere in the law. How would “adopting an additional, long-term speed benchmark for fixed services, in addition to our existing benchmark ... help the Commission to promote the deployment of advanced telecommunications capability” today? In fact, the Commission rejected the idea of setting an additional “forward-looking” benchmark in the past two reports, so I’m not sure why this is even on the table again this year. Setting an aspirational benchmark is particularly questionable when a majority of the Commission claims that we haven’t made progress in meeting the current benchmark, which was set two reports ago. In my view, 25/3 Mbps continues to be aspirational enough already.

Moreover, even if this year’s inquiry resulted in a finding that 100 percent of consumers had broadband at 25/3 Mbps speeds, which it won’t be able to do, what would it matter if we were only on a partial trajectory to some arbitrary aspirational goal to be achieved at a future date? Would the Commission still produce a negative finding under its Section 706 “authority”? Of course not. Setting aspirational speed thresholds for an exercise that requires a snapshot in time is beyond dubious and borders on the ridiculous.

Further, this item reiterates the falsehood, contained in last year’s report, that wired and wireless services are not functional substitutes. And yet the American people – as evidenced by their perceptions and personal behavior – find them so. Despite this information, the Commission appears prepared to declare that consumers must have access to both or a perpetual threat of a negative Section 706 finding looms in the balance. Moreover, the item’s inquiry highlights that the Commission seems to be no closer to defining the magical measurements of ubiquitous wireless service components that would be necessary to avoid such a finding.

I also continue to object to including non-deployment factors, including privacy, security, adoption, and pricing, into the determination of whether “advanced telecommunications capability is being *deployed* to all Americans in a reasonable and timely fashion.” For example, the item suggests, as many of us anticipated at the time, that the Charter Communications-Time Warner-Advance/Newhouse “findings” will now be used as precedent for other actions. In this case, data allowances are examined – without the presentation of any counter arguments – as a means to “affect the availability of advanced telecommunications capability.” While data caps/allowances may or may not affect consumer take rates, that is a far different issue than whether Internet access is being deployed to all Americans.

In the end, the NOI is not completely objectionable on its face. But make no mistake, everyone is already in on the larger joke to be played with this inquiry process. We all know the eventual outcome of the final report pursuant to section 706 that will be coming in the future. This seemingly benign NOI does not hide the reality that awaits.