

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

*Re: Section 257 Triennial Report to Congress: Identifying and Eliminating Market Entry Barriers For Entrepreneurs and other Small Businesses*

In reading the text of the report, it is amazing how much of it misses the mark when compared to the intention in the statute. Section 257(c), as enacted as part of the Telecommunications Act of 1996, requires a review and report to Congress every three years on regulations prescribed to eliminate market entry barriers and statutory barriers that can be eliminated, as identified under subsection(a). But the scope of subsection (a) clearly addresses barriers “for entrepreneurs and other small businesses in the provision and ownership of *telecommunications services and information services*, or in the provision of parts or services” to those entities. In other words, this deals with the ability of small businesses to get into and remain in the telecommunications and information services sectors, which are defined terms in the law, as providers or those that serve as a supplier or subcontractor to such industry participants. It is not a general request to talk about random or tangential barriers to entry for small businesses, however important. At best, only a portion of this report can be said to be responsive to the law.

Even if the statute were read to suggest a broader application, Congress certainly did not expect that the report would be considered as just another opportunity to proselytize in favor of the current Commission’s partisan agenda. Now, a certain amount of advocacy for specific (and applicable) policies could be expected, but the Commission and, more specifically, its designated “in-house advocate for small businesses and entrepreneurs,”<sup>1</sup> the Office of Communications Business Opportunities (OCBO), seem to misconstrue its role here.

In considering the report, I asked OCBO for some background information that was not included, though it seemed to me to be an important reference point when analyzing the Commission’s impact on small businesses. In particular, I wanted to know the change in the amount of time that small business regulatees spend in complying with our regulations during the timeframe covered in the report, and also the number of times that the Commission considered but declined to make accommodations for small businesses. I thought that the Commission’s in-house small business advocate would have this information readily available. Surprisingly, I was told that OCBO does not keep track of this type of data, and was further informed that it is not required under the Regulatory Flexibility Act, the Paperwork Reduction Act, or any executive order. This explanation completely misses the point. These data points and lots of other similarly basic data should be available to help us understand the impact of the Commission’s activities concerning this exact subject. Otherwise, any assertions about the Commission’s understanding of or overall commitment to lowering barriers for entrepreneurs and small businesses remain just that – assertions.

As to the specific policies touted in the report, many have proven or will prove to cause more harm than benefit to small businesses. How can the Commission hold up its ban on broadcaster joint sales agreements as a positive for small businesses, when many existing JSAs have allowed small broadcasters to better manage resources or to stay in business at all? And the Commission’s ill-fated decision to preempt local and state laws restricting municipal broadband would be well on its way to skewing some markets, disadvantaging private internet service providers, but for the court decision overturning it. How could this policy be listed as a winner for small business? Certain updates to the Commission’s website even get a mention as an unequivocal positive, though the reviews I am hearing are decidedly mixed.

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<sup>1</sup> *Id* at para. 9.

But net neutrality receives top billing on this marquee, to the wonderment of those of us observing the steady stream of new and ever more burdensome requirements it has unleashed on Internet Service Providers, which are, of course, especially burdensome to small providers. The new mountain of paperwork required was the first and most obvious problem, but all the Commission was willing to do was a temporary small business exemption, which it declined to make permanent at the end of last year. Instead, after much cajoling, a twelve-month extension was begrudgingly granted, and another temporary extension has just been proposed. The Commission should take a hint from the House passage of the Small Business Broadband Deployment Act, and a similar Senate version, and make this exemption permanent.

This notwithstanding, the report does highlight some actions that I advocated or supported, and that I believe are helpful in the larger definition of small businesses. The streamlined effective competition process for cable operators, Commission efforts to make new spectrum available to commercial users, and reforms for the high-cost program within the Universal Service Fund are a few examples. In some instances, regulatory relief consisted of delayed compliance timeframes like the net neutrality reporting extension already discussed. While I supported such delays as preferable to no relief at all, I would caution that these temporary measures are just a temporary reprieve from the regulatory avalanche to come.

At the same time, it is alarming that this report is more than two years late. The Commission's last Section 257 report was done in 2011, covering a review of 2007 to 2009.<sup>2</sup> No reasons are given for why the Commission ignored the deadline in the law and none will be forthcoming. Instead, the Commission will just move along like nothing happened. I cannot support this blatant indifference to Congressional requirements.

Overall, this report is flawed and extremely late. I approve its issuance, as required under the law, approve instances where it actually acknowledges and addresses legitimate and applicable market entry barriers for small businesses, and reject the rest.

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<sup>2</sup> *Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, 26 FCC Rcd 2909 (2011).