

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 18-90.

Last April, the Commission voted to effectively waive the existing operating expenses limitations for several rate-of-return carriers predominantly serving Tribal lands. Those minor guardrails prevent carriers from spending outrageous or irrational amounts on opex in excess of their industry peers. At the time, I had serious concerns about this policy decision and its potential to undermine the Commission's previous market-driven Universal Service reforms. Ultimately, after a lengthy negotiation period, I was willing to reach a compromise with the Chairman and my fellow commissioners to direct the increased opex support in a more targeted manner, and, in turn, lessen the order's potential for wasteful inefficiency.

With this item, we find ourselves re-plowing the same field. While I have ultimately voted to grant the petition at hand, I do so with real trepidation regarding the precedent we set and the incentives we create.

First, this decision is by no means an exemplar of promoting broadband deployment among unserved Americans. While so many communities—Tribal and otherwise—languish without any form of broadband, today we devote scarce *extra* opex support to a carrier that has already deployed 10/1 Mbps service to a smidge short of 90 percent of its housing units in its study area, based on its own mapping and analysis. The company in question may be able to demonstrate that its deployment is barely under the applicable threshold, but I still struggle to make sense of why this carrier is deserving or in need of a waiver for additional opex funding.

As is the case under the rate-of-return budgetary cap, every dollar spent inefficiently comes at the expense of another deserving carrier and their consumers who still lack access to broadband. Given the diverse conditions present on Tribal lands, a blanket approach to those communities does not adequately reflect principles of need or efficiency. Had the significant excess funding per year that Mescalero Apache claims it is formally entitled to gone instead to support broadband deployment in truly unserved communities—Tribal or otherwise—it would have been spent in a more justified manner.

Second, this order highlights the problem of relying on Form 477 data for purposes of providing USF subsidies—a use for which the data was never originally intended. While the flaws of such reliance are well-known, the Commission has inconsistently chosen to either rely on the data, as in the second A-CAM offer, or reject it, as in the case at hand, in the absence of a formal challenge process, claiming the latter would be burdensome and time-consuming for staff. Rather, the Commission here chooses to allow Mescalero Apache to mount its own informal challenge, unencumbered by objective challenge process parameters derived through a notice-and-comment process. Does this mean that every time the Form 477 Data is wrong or fails to reflect actual deployment, parties—provided they have the necessary resources—can mount an informal challenge process to dispute the Commission's reliance on existing maps? In my opinion, this ad hoc approach is not sufficiently transparent, leaves too much up to discretion, and is a poor substitute for a thorough comment opportunity. The Commission's Form 477 Data problem is very real, and we don't help matters by foregoing a meaningful challenge process for purposes of convenience.

In the end, I have decided to honor the deal I struck with former Commissioner Clyburn with respect to the 90 percent deployment threshold. While it wasn't my first choice of a landing spot on this difficult issue, sticking to my word is central to who I am, and I believe strongly in protecting parties' reliance interests. Moreover, I still believe that the benchmark represents a reasonable guardrail. Here, Mescalero demonstrates that it squeaks by under the threshold. Therefore, despite having multiple problems with this outcome as described above, I vote to approve the order.