

**FCC Commissioner Michael O’Rielly**  
**Remarks Before WTA’s Fall Conference in Coeur d’Alene, Idaho**  
**September 19, 2017**

Thank you for the kind introduction and inviting me back to speak with you all. Given the busy schedule of events yesterday, I have to say that I am a bit surprised that so many of you have come out to listen to me so early in the morning. I also noticed that the morning coffee break is *after* my remarks so I will do my best to keep the excitement level up until you get a chance to refuel.

According to the agenda, I’ve been tasked with kicking off the second quarter of your football themed conference, and that timing seems appropriate given where we are with our high-cost reforms. When I last visited you in Palm Springs in the spring of 2015, we had just started the process to update the rate-of-return program. Based on the tough questions you asked at that time, I could tell that a number of companies were skeptical of how the effort would pan out.

After another year of hard work and collaboration with you and other stakeholders, the Commission issued the *Rate-of-Return Reform Order* and implementation is underway. But while the rules are set, and there are points on the board, there is still more work to be done. According to the Communications Act, winning the game means ensuring that reasonably comparable services are offered throughout all regions of the Nation. The Commission, therefore, must press onward to ensure that consumers, including those in the most remote and hardest to serve parts of the country, gain access to broadband, including in your territories and through the Remote Areas Fund.

My intent today is to summarize where we are in the process, outline what remains to be done, and discuss other developments at the FCC. Afterwards, I would be happy to answer any questions you may have on these or other topics.

*Rate-of-Return Reform Order*

To briefly recap, the *Rate-of-Return Reform Order* released last spring was intended to achieve a long-lasting, fiscally responsible, and forward-leaning system that would provide stability and certainty for carriers to invest in broadband and expand service to consumers in rural America. The order modified the Commission’s rules to permit funding for standalone broadband, while at the same time addressing a number of issues with the prior system.

Specifically, the package of reforms established requirements to extend broadband to unserved consumers, to better target funding to where it is needed most while being cognizant of prior investments, and to prevent funding areas where actual competition exists. It also improved transparency and accountability regarding the use of the funding. Additionally, the order provided a completely voluntary path to model-based support for carriers who actively sought it.

On that last point, I was struck by how many providers ultimately elected model support. In meeting after meeting as I traveled the country, I asked providers if they were interested in choosing the model path, and only a handful would raise their hands. In the end, however, 207 rate-of-return carriers in 43 states elected and have since been authorized to receive model support. Indeed, I’m told that model electors represent approximately 45 percent of WTA’s membership. In short, you all have excellent poker faces.

### *Subsequent Commission Actions*

Since the order was released, I continue to hear from providers and associations that the rate-of-return framework is sound and not unduly complicated. At the same time, providers and their associations identified a handful of technical matters, known as the “punch list,” that require further clarification or course correction by the Commission. As promised, I have pressed FCC staff from the very start to quickly address any legitimate issues that have arisen.

For example, one key punch list item that I know was important to several WTA members was a concern that the order could be read to contain a “kill switch,” cutting off all recovery for capital projects that exceeded a certain threshold. I, for one, never intended to put in place a “kill switch” and would have preferred to clear up the apparent confusion as soon as we became aware of it. Failing that, however, I supported the Commission’s decision to make clear that rate-of-return carriers may undertake additional investments to deploy broadband in a cost-effective manner without fear that they will lose support.

We also have an item currently under consideration that, among other things, would revise the ARC imputation rule. I hope that the Commission resolves this and other pending issues soon, including specifying in more detail which expenses are not recoverable through universal service or allowable in the rate base. While I fully appreciate that the vast majority of providers use available funding, as intended, to build broadband and serve their consumers, critics of the high-cost program are able to point to examples of dollars being used for items like artwork or golf club memberships as justification for not providing other relief or flexibility to carriers. My suggestion has been that we remove the issue from the table by creating a list of expenses that reasonable people would agree should be excluded.

In addition to these punch list items, the FCC has also taken steps to reduce other costs borne by rate-of-return carriers. For instance, at my urging, we eliminated four instances of duplicative or unnecessary reporting requirements identified in the rate-of-return proceeding. And, we have sought comment on the Form 477 broadband data collection, including ways to streamline and reduce the burdens on small providers. We have more to do to eliminate unnecessary regulation, as the Commission’s information and recordkeeping requirements still impose an annual burden of over 71 million hours at a cost of over \$787 million across all regulatees. And the agency still doesn’t track the cumulative burdens of its regulations on small businesses. These are issues I will continue to pursue.

### *High-Cost Budget and Use of Reserves*

Apart from these technical corrections and burden reductions, I have not heard a need to make any fundamental changes to the rate-of-return framework. Instead, I have heard both legacy and model support carriers request that the FCC consider increasing its overall rate-of-return spending allocation by a small percentage to generate greater broadband buildout. For some legacy carriers, this also would help minimize the impact of the budget control mechanism and reduce the cost of standalone broadband for some consumers.

I am generally favorable to adding some additional funding to the rate-of-return portion of the high-cost budget for both legacy and model support carriers. Indeed, I have stated publicly that the Commission should closely examine our high-cost reserves, and review any assumptions, policies or directions regarding those reserves, to determine whether additional funding could come from those reserves without having a significant impact on our other obligations, such as the Remote Areas Fund.

Based on information provided in ex partes and, separately, by an outside expert who provides quarterly reports on universal service demand and revenue projections to a broad audience, it does appear that some amount of reserve funding could be available, particularly in the short-term. While it may not provide all the relief sought by affected carriers, it could benefit consumers and carriers in areas more difficult to serve, including those areas that tend to be in rural America.

More broadly, the FCC already anticipated, back in 2011, that it would undertake a review of the entire high-cost budget by the end of 2017 to ensure that funding levels were properly calibrated. In the *USF/ICC Transformation Order*, the Commission set an annual budget of \$4.5 billion for the six-year period of 2012 through 2017, including a \$2 billion budget for the rate-of-return program. The Commission stated that its funding estimates represented its “predictive judgment” as to how best to allocate limited resources at that time. However, the Commission said it expected to revisit its estimates based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals. The agency also made representations that it would undertake such a review when it was defending the order in court. Moreover, this is the exact type of review I’ve recommended the agency undertake whenever it bases policy decisions on predictive judgements.

Now we are approaching the end of the six-year period. If the Commission does nothing, I’m told that the budget expires, any reserves that have not been committed are used to reduce the contribution factor, and funding for the program would be based solely on demand in any given quarter. That is not an acceptable outcome. I have consistently advocated for firm budgets on each of the USF programs as well as an overall budget across all of USF. And I have been vocal about imposing a cap or firm budget on the Lifeline program. Therefore, we cannot, at the same time, allow the high-cost program to operate without its own budget control.

As part of this necessary budget review, the Commission also should consider the state of the reserves and whether to continue the policy of reserving funding going forward. Moreover, information on expected program expenditures and cash on hand, including any analysis by FCC staff or USAC, should be made public so that all interested parties can understand how funding is expected to be allocated and whether and how much additional support is available over the next ten years.

The Commission may also need to consider a temporary extension of the current budget and reserve policy to ensure that there is no lapse pending completion of the formal budget review. Should the need arise, I would support such an item in order to provide stability and certainty for the program.

#### *Overall Universal Service Budget*

Even more broadly, the Commission needs to examine the overall budget for universal service, across all four distribution programs, and how the programs interact with each other. Over the past number of years, sometimes over my strenuous objections, the Commission has explicitly authorized funding of at least \$11 billion for universal service. That’s \$4.5 billion for high-cost, \$3.94 billion plus annual inflation for E-rate, \$2.25 billion or more for Lifeline, and \$400 million for Rural Healthcare.

Moreover, pressure to increase spending continues. For instance, some petitioners seek E-rate funding to provide service to the community, something that has traditionally been the province of the high-cost program. In addition, the Rural Healthcare Program is projected to have demand well in

excess of its budget in the coming year so recipients are clamoring for funding to avoid their own shortfalls. In short, it is time to take a hard look at total spending.

Some have suggested that the Commission find more dollars by broadening the base of those who pay in to USF to include broadband users. Having worked for years on Internet tax freedom, now enshrined in the Permanent Internet Tax Freedom Act, that is something I cannot entertain absent Congressional direction. While I am willing to look at solutions that do not impose additional fees on broadband, this must be paired with a real effort to review and control USF spending.

#### *Other FCC Proceedings*

Before wrapping up my remarks, I do want to briefly touch on a few other proceedings at the FCC so that you have a sense of our other ongoing initiatives.

One topic that continues to receive a lot of attention is the Net Neutrality proceeding. Earlier this year, the FCC sought comment on the previously adopted bright line rules, the general conduct standard, and whether to reverse the classification of broadband as a Title II service. The agency is reviewing the comments and it wouldn't surprise me if a decision is issued later this year.

My views on the topic are well known, so I won't go into the details. But I do want to touch on one argument that has been raised that I find to be completely misguided: that if the Commission were to reverse the Title II classification, it would have no legal authority to fund broadband through its USF programs. In the *USF/ICC Transformation Order*, the Commission made clear that it has authority under section 254 to fund voice and broadband capable networks. As long as a provider offers voice, which includes VoIP, then it qualifies for support even if the customer, for example, subscribes to standalone broadband. Section 254 also authorizes support for broadband within the E-rate and Rural Healthcare Programs. Moreover, while the prior Commission did use Title II as authority for the Lifeline program, the agency could take the same legal position for Lifeline that it did for high-cost.

Relatedly, I have heard concerns that, if the FCC finds that broadband is being deployed in a reasonable and timely manner, in the annual report required by section 706 of the 1996 Act, it would no longer have any impetus to promote broadband deployment. As I hope the last 10 minutes have made clear, the agency is spending and will continue to spend a great deal of time on broadband deployment. There is a big difference between declaring sufficient progress is being made from year to year and finding that we have achieved universal service. I see no risk that we would halt our USF programs or other broadband infrastructure initiatives based on a single section 706 progress report.

Finally, the Commission and the Chairman's Broadband Deployment Advisory Committee are spending significant time identifying remaining obstacles that impede the deployment of wireline and wireless broadband services nationwide and considering discrete solutions. The Commission has sought comment on proposals ranging from streamlining and clarifying the pole attachment process to overcoming barriers to wireless infrastructure siting. I hope to see these efforts bear fruit in the coming months.

\* \* \*

With that, I'll stop, catch my breath, and then take any questions you may have.