

Statement of Michael P. O’Rielly
Principal, MPORielly Consulting, LLC, and Visiting Fellow, Hudson Institute

Before the Senate Committee on Commerce, Science, & Transportation
Hearing Entitled “Recent Federal Actions to Extend Broadband: Are We Making Progress?”

March 17, 2021

Thank you, Chairwoman Cantwell, Ranking Member Wicker, and Members of the Committee, for inviting me to share my views on the important subject of expanding high-speed broadband access in America. In a year that has presented many challenges — on many levels — it is a pleasure for me to return to familiar stomping grounds. May I also extend my appreciation for your continued public service to our nation, despite the unfair and inappropriate criticism often laid before this body.

Introduction

There should be little disagreement that broadband technology has altered — and, in most cases, improved — American society. The availability of high-speed Internet allows users around the world to communicate, learn, work, conduct commerce, and so much more. These benefits have never been more apparent than during the Covid-19 pandemic when American families have been isolated and quarantined. In fact, in some instances, including access to telemedicine/telehealth or testing and vaccine information, the technology has been a lifesaver.

America’s private broadband sector deserves immense credit for the investment and upgrades it implemented over the last many years to handle the recent increase in Internet traffic. Reports and anecdotal evidence suggest that companies experienced increases of 30 to 50 percent in usage compared to the pre-Covid time period. Our networks performed incredibly well, especially in contrast to other nations, including countries in the European Union, which were forced to request that Internet content providers take measures to stymie Internet consumption and speeds in order to minimize challenges to overall network sustainability. It is because of our industry’s foresight and network advances in prior years that U.S. broadband networks were generally able to sustain these capacity demands. And, the industry should be duly credited for forgoing revenue and fees during the Covid-19 crisis to ensure connectivity to subscribers in financial need, as part of voluntary pledges to the government.

Despite these positive experiences, many American families still have had to suffice with substandard broadband or are without the means to obtain service. In addition, a portion of the population has never sought to be connected at all. Addressing these issues was a high priority during my time in public service, especially at the FCC, and will remain so going forward.

Federal Broadband Investments and Challenges

One of the Commission’s highest priorities over the last decade has been to increase the availability of high-speed broadband. Without availability or deployment, all other issues pertaining to broadband access do not exist. While critics can and do argue over the speed thresholds or measurements used, there should be no doubt that enormous progress has been made, especially in reaching the hardest to serve corners of our nation. Most American families now have broadband or will have the option to connect, thanks, in no small part, to the efforts of the professionals at the Commission to distribute

approximately \$4.5 billion annually in high-cost support from the Universal Service Fund (USF). From modernizing the Connect America Fund and removing obstacles to rate-of-return providers offering standalone service, to the approval of model-based support and the introduction of reverse auctions and the latest Rural Digital Opportunity Fund Phase I, the FCC has been at the forefront of solving the broadband availability problem. But more work remains, and I am not aware of a single person who has ever suggested that the mission was or is near complete. Instead, the private-public partnership that has proven productive will need to continue to solve remaining connectivity gaps. And, governments must continue providing the necessary incentives for the private sector to continue to extend their networks and deploy new ones.

Congress recently has acted on multiple fronts to improve broadband deployment. The added funding for broadband buildout to specific groups or targeted populations in various legislative efforts has the potential to serve important functions. Some of this money has been allocated to the FCC to operate or expand specific programs. Congress has also pushed for more precise broadband mapping, and deserves credit for these efforts.

Moreover, a host of federal entities, outside of the FCC, are now administering broadband-related programs, including the Department of Agriculture, the National Telecommunications and Information Administration at the Department of Commerce, the Department of Education, and the Department of Treasury. While I sincerely hope that these programs will do immense good, I have concerns over how such funding mechanisms have been administered in the past and worry about their potential to undermine the nation's progress in the future as well.

Coordination, Duplication, and Overbuilding

Overlapping federal programs increase the likelihood of duplicative investment, which can be counterproductive to the efforts' success. I certainly applaud Congress and the Committee, led by Senators Wicker and Klobuchar, for promoting coordination efforts via the Broadband Interagency Coordination Act as part of the 2021 Consolidated Appropriations Act. While I do believe these provisions will be helpful, coordination can be difficult to mandate in practice, especially when the scope of relevant agencies keeps changing. Consider that I held discussions years ago with the Department of Agriculture as it was establishing the "ReConnect" broadband loan and grant program. Sadly, its leadership had a weak grasp of what subsidized overbuilding is and why it is problematic. Coordination can mean a host of different things, and when two agencies aren't on the same page when it comes to the problem that coordination is supposed to solve, measures to coordinate agency actions may be ineffective. As a result, to avoid impeding private sector broadband efforts and potentially threatening the viability of smaller or mid-sized companies, Congressional efforts to mandate to coordination may need to be more specific and robust.

Harm to FCC programs

I have additional concerns that recent federal investments efforts could undermine Commission efforts to promote efficient subsidies. By distributing broadband subsidies through reverse auctions, for instance, and enabling mechanisms like price discovery and competition, the Commission reformed its programs to be more market-oriented and effective. At the same time, the administration of federal grant programs by agencies with little broadband experience can undermine this progress. Since FCC subsidy recipients face the risk that another agency will subsidize a competitor, the value of their

carefully targeted support may be insufficient, and recipients may be left unable to meet their obligations.

Obstacles to Buildout

Despite the great desire of policymakers, providers, and users to ensure broadband access to those without, many restrictions are preventing that from occurring. Specifically, some state and local governments and private company limitations are acting as barriers to greater deployment. Providers can face high fees to utilize existing communications infrastructure — e.g., poles, ducts, conduits — or convoluted processes to gain rights-of-way and zoning approvals. They also encounter limitations on the placement or expansion of wireless facilities. The Committee could advance deployment by clarifying acceptable and prohibited practices. While I may be willing to push these entities further than others, any clarifications in law would be extremely helpful and preempt the constant legal squabbles.

Affordability and Adoption

It is a simple fact that deploying broadband networks and offering services to consumers is an extremely costly and timely venture. Unfortunately, as companies set the proper price points to recoup such investments, the end consumer charges have proven to be more than some American families can spend. The precise populations at risk for being unable to afford broadband can be difficult to define, but we do know that communities of color and those economically challenged are more likely to be affected. There is also a certain portion of the population that sees no value or need to obtain broadband. Improving these situations are not a Republican or Democratic issue, but represent real problems that need to be properly addressed.

For many years, I sought improvements to the Commission's Lifeline program. My views were not always accepted, and I believe that the program remains troubled. While a revised Lifeline could serve as the basis of a new effort to address the affordability and adoption issues, it is also possible that the recent Congressionally enacted Emergency Broadband Benefit Program could be a more appropriate model. Regardless, addressing these important concepts will require a more holistic and thoughtful approach than has been attempted in the past.

New Investments and Possible Additional Efforts

Like many, I am still analyzing the broadband-related provisions in the latest Covid-19 law, along with those just introduced to enact a huge infusion of federal broadband funding. My initial reaction is that the added E-Rate funds will be difficult to stop once the pandemic ends. This means that providers, who invested heavily in those areas, potentially risk losing customers, which may affect their ability to maintain, upgrade, and expand service. I also have concerns with the new \$10 billion program created within the Treasury Department. There appears to be few, if any, limitations on how this funding can be used. That raises a host of red flags, and I'm hopeful that appropriate guardrails can be imposed later, with the recognition that they were not permitted under the reconciliation process.

In terms of new legislative efforts as part of a larger infrastructure bill, these efforts also raise concerns that hopefully will be explored as part of the legislative process. If this proceeds forward, there are a number of troubling components, beyond the funding levels, that should be fully explored and potentially amended before any enactment. For instance, the speed thresholds seem very ambitious

and could contradict the goal of connecting the truly unconnected, as opposed to updating those areas with service.

* * *

Broadband is a highly-valuable service that can be life changing for many Americans. Exceptional progress has been made over the last few by the private sector and through various federal programs to extend existing networks and ensure service to those interested families. More work remains to be done in this area, but it needs to be accomplished thoughtfully and carefully, lest it causes more harm than good.