

REGULATORY DIVISION

DOCKET NO. D2013.11.80

ORDER NO. 7319

DISSENTING OPINION OF COMMISSIONER ROGER KOOPMAN

While the Public Service Commission is not a federal legislative body, there are sometimes opportunities for commissioners, in the performance of their duties, to exercise judgment over the merits of federal policies and spending programs that fall within their purview. Given that state commissions enjoy a much closer vantage point from which to assess the on-the-ground effects of these programs and economic interventions, we should welcome every opportunity to weigh in and to exert a positive influence on behalf of rate-payers and the general citizenry of our state and nation.

State commission certification of Eligible Telecommunications Carriers (ETCs) under both the Connect America Fund and Low Income Universal Service Fund (USF), is one such opportunity to “just say no,” if in a commissioner’s best judgment, this multi-billion dollar system of subsidies and giveaways is (1) contrary to the best interests of his state, or (2) requires him, through ETC approval, to violate his oath of office. This commissioner believes these USF programs (and therefore the approval of any ETC designations,) constitute wrongful public policy on both counts.

Space limitations do not allow a full discussion of these points. Suffice it to say that the massive waste and abuse of these programs is well documented and continues to this day, regardless of the “controls” purportedly in place. Moreover, such programs replace rational, market-based decision making with political interventionism, which in turn distorts market signals, shrouds true user costs, misallocates resources and fosters both consumer and industry dependency on government. As with all federal wealth transferring schemes, they create the

DOCKET NO. D2013.11.80, ORDER NO. 7319 18

Illusion of a net benefit (for recipients do indeed receive an obvious and visible gain from government at other citizens’ expense.) But at what cost? On balance, these devices produce a much greater loss, both to the rate-payer financially and to our economic independence as a free nation. The market, not the federal government, should determine what telecommunication services and facilities are built where, and at what price.

Last I checked, neither the Declaration of Independence nor the Constitution of the United States suggest that cell phones and high-speed internet are inalienable rights. Jefferson did not pen the words, “life, liberty and fiber optics.” (Nor life, liberty, a horse and a cow, for that matter.) This brings me to my second point.

Even more fundamentally, commissioners must remind themselves that their first responsibility is to honor their oaths of office – and that begins by respecting and defending the Constitution of the United States. Prior to any “pragmatic” or political considerations, commissioners must begin by determining if the governmental activity being considered is in fact Constitutionally authorized. The framers very intentionally limited the scope and authority of the federal government to those functions and powers specifically enumerated in the Constitution, reserving the balance of potential governmental roles to the states and to a self-governing people (Tenth Amendment.) It is this commissioner’s firm belief that the federal USF income transfer, subsidy and giveaway programs violate both the spirit and the letter of the

U.S. Constitution, and that to advance these interventions through ETC certification would constitute a violation of our sacred oath.

I therefor DISSENT with the Order.

---

Roger Koopman, Commissioner (dissenting)