

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97

Many thanks to the Chairman for combining the discussion of these two items, addressing similar but distinct aspects of the same topic.

Overall, I appreciate the challenge of trying to corral and decrease illegal robocalls, many of which originate overseas. Do note that I said *illegal* robocalls, as not every robocall is problematic. In fact, many are extremely beneficial to consumers, providing information they want and expect to receive from trusted companies. The Commission's job should be to ensure that it doesn't prevent or squash legitimate robocalls in its ferocious quest to curtail unlawful ones.

I find the second item, regarding reassigned numbers, to be extremely pertinent to the entire discussion. Quite frankly, I think this item shines a bright light on just how misguided and fundamentally broken the Commission's *2015 TCPA Declaratory Ruling* really was. At that time, I begged the Chairman, my fellow Commissioners, and the staff to accept reality and address the issue of reassigned telephone numbers in a meaningful way. I was ultimately unsuccessful. Instead, the Commission tried to pretend the problem wasn't valid despite estimates that 100,000 cell phone numbers are reassigned to new users each day and telephone numbers are typically withheld for only 90 days or less before being recycled to new users. This meant the scope of the problem was much larger and thornier than the Commission ever acknowledged, making any type of "prior consent" extremely difficult and essentially worthless in a short amount of time.

Exacerbating the situation, the Commission created a faulty and intellectually dishonest solution of "one free call to a consumer" exemption as a fig-leaf remedy. Recall that the exemption does not require consumers to accurately inform the caller that the number has been reassigned; ignores the worthlessness of uninformative voicemails; and even counts call attempts or informational texts where there was no response at all against the one call policy. Moreover, accidental misdials receive no protection whatsoever. In my limited time, I won't belabor how bankrupt this really is and how it has ensnared legitimate companies in needless, financially-crippling litigation for the simple practice of trying to contact their willing customers. I am hopeful that the D.C. Circuit will overturn this and other portions of our previous declaratory ruling and install an intended recipient or actual knowledge standard as the proper legal test, which is completely consistent with the underlying TCPA. In addition, the Commission should initiate a new proceeding to effectuate this change.

To the extent that the issue is not mooted by court action or our own initiative, the item before us explores the creation of a reassigned number database as one option to deal with the issue. The idea being that companies could cross-check their calling lists against an accurate and consistently updated database of reassigned numbers to significantly limit the number of stray calls. While not a new idea, as many people in the past have proposed differing options, such as using part of the Commission's existing numbering resources, the *Second Notice of Inquiry* explores many of the relevant issues that would need to be sufficiently answered before creating such a database. Chief among these is language, added at my behest, that examines whether to similarly create a safe harbor for companies that use the database to minimize calls to reassigned numbers. Simply put, there must be some benefit for companies to help establish, pay for and use such a database, and a properly constructed compliance safe harbor must be part of any equation, if this item is to proceed forward.

In the first item pertaining to call authentication, I am less sanguine. While I applaud the Chairman for creative efforts to further curtail illegal robocalls and will vote to approve since it's an NOI, I am not exactly as comfortable with some of the direction or suggestions posed. Certainly, I am not in favor of having the Federal government via the Commission actively involved in these functions – either as a governance authority or policy administrator – no matter how meritorious it may be for reducing unlawful robocalls. Creating, facilitating, or mandating such a regime, which seems to be very close to establishing a *de facto* technology mandate, is not the proper role of the Commission. Those functions should be left to the private sector. Moreover, ATIS, the purveyor of the SHAKEN framework, favors a minimalist government role or none at all. That seems to beg the question why we would contemplate anything more. To the extent that the Commission feels it must get involved, and we would need to see some very convincing evidence, holding roundtables with applicable parties or letters seeking information on the potential roadblocks would be the best course of action, if any. Maybe we can use the TAC and CSRIC for that?

Operationally, I am a bit puzzled how this structure would actually work in relation to the authentication that already exists for data packets, which was initiated without FCC or other government involvement. For data packets that contain voice would there be some extra certification and authentication structure separate from that applicable to all other data packets?

In the end, the item raises the most salient issue, stating: “We anticipate that adopting authentication frameworks in the United States will naturally have less effect on foreign robocalling...” In other words, if this item were eventually turned into final Commission rules, its likely to have questionable impact on illegal robocalls initiated overseas. Given that most experts agree that a good portion of robocalls initiate outside the boundaries of our good nation, this would certainly need to be fed into a cost-benefit calculation as to whether FCC intervention is warranted, as opposed to industry-led efforts.

With that, I will vote to approve each of the two items.