

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND DISSENTING IN PART**

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

At the outset, let me thank Chairman Pai for his enormous leadership on the fight to eliminate bad robocalls. He's been very incredibly focused on reducing this perverse problem. I am at a loss to see more steps that the Chairman could take on the matter.

Like my fellow Commissioners, I share the desire to eliminate the menace of *illegal* robocalls and believe that this item is very well-intended, though I nonetheless wonder if it may lead to certain problematic consequences. Completely legitimate organizations and businesses regularly engage in so-called "robocalling" to provide consumers with critical and time-sensitive information, such as fraud alerts, flight schedule changes, school closures, delivery window delays, prescription notices, appointment reminders, public safety alerts, and—yes—anti-delinquency notices. Efforts to attack illegal and fraudulent calls should not restrict or prevent these beneficial robocalls.

To ensure lawful calls are delivered to consumers, I have urged carriers to adopt expeditious processes to correct call blocking and labeling errors. We should applaud providers for offering such services to their customers, generally free of charge, and I have supported the adoption of safe harbors from Communications Act liability. However, formalizing redress mechanisms is a necessary corollary, especially for blocking performed at the network level and not subject to customer consent. And, that is why, in the November 2017 illegal robocall blocking order, I sought inclusion of a Further Notice seeking comment on adopting mechanisms to ensure swift redress for erroneously blocked calls. I have heard countless accounts of erroneous blocking and labeling both prior to and in the aftermath of the 2017 Order and welcome the adoption of a future item in response to that record in prompt course.<sup>1</sup>

Notably, that 2017 Order only allowed carriers to block very circumscribed categories of calls, namely, calls on a Do-Not-Originate list, and those from invalid, unallocated, or unused numbers. That is a narrower universe than the vast range of calls affected by today's Declaratory Ruling, which enables opt-out blocking of illegal *and* "unwanted" calls. While I fully and wholeheartedly support Commission efforts to purge *illegal* calls from our networks, I am concerned about encouraging default blocking of so-called "unwanted" calls. Categories like "wanted" or "unwanted" can be somewhat vague and subjective, to put it mildly. Giving carriers such vast discretion to decide which calls are *unwanted* could lead to *wanted* calls, containing highly-pertinent consumer information, being blocked.

Further, to the extent that carriers may block calls by virtue of their use of "reasonable analytics," that term seems to invite a similar risk of problematic blocking. While there are very sophisticated call analytics services on the market that boast very low error rates, we don't favor any particular maximum error rate, or the use of analytics of a certain caliber. Since the treatment of a given call has been shown to vary from service to service,<sup>2</sup> callers could experience unpredictable call completion outcomes.

As any e-mail user knows, spam filters, which operate through analytics, are by no means perfect. Almost everyone has had the experience of missing important messages because of an oversensitive filter. For a service that is generally free and unregulated, I can accept placing the burden on consumers to go

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<sup>1</sup> See, e.g., Letter from Paula Boyd, Senior Director, Government and Regulatory Affairs, Microsoft, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 et al. (filed February 8, 2019); Letter from Rebekah Johnson, CEO, Numeracle, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 et al. at 3-5 (filed May 22, 2019) (Numeracle *Ex Parte*); Letter from Yaron Dori, et al., Counsel to PRA Group, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 et al, at 1 (filed May 29, 2019).

<sup>2</sup> Numeracle *Ex Parte* at 3-5.

into their spam folders periodically to look for erroneously-labeled emails. That same circumstance doesn't exist for voice calls, which have been hyper-regulated for decades and do not feature a means to determine what has been missed. To the extent that providers implement this new default regime, I worry that consumers will only realize that important voice calls have been blocked after it's too late.

I sought to rectify this potential harm by requesting that the item at a minimum require carriers to implement a redress process for erroneously blocked calls. After all, even the CEO of First Orion, one of the largest analytics companies and likely beneficiaries of this item, recently sat in my office and stressed the need for mechanisms that respond to blocking complaints effectively and expeditiously—in hours, not days, in his words.<sup>3</sup>

Procedurally, this didn't exactly fit the Declaratory Ruling. However, the Chairman did agree to add language noting that a "reasonable" blocking program would include a mechanism for resolving complaints. That is a huge step forward even if it may not provide a complete respite from blocking purgatory. I thank the Chairman for recognizing the need for effective redress.

In availing themselves of this Declaratory Ruling, providers will need to exercise great vigilance in their call blocking efforts and establish meaningful safeguards for consumers and legitimate callers. I hold out hope that all goes well because there is so much at stake. At the same time, put me down as someone open to refining some of the item's points of contention going forward.

Nonetheless, I am going to dissent on one smaller issue: the draft's delegation to bureau staff to collect "any and all relevant information" from voice service providers to prepare reports on the state of call blocking. I worry that this language is breathtakingly expansive and gives the bureau virtually unlimited authority to demand whatever data it wishes from carriers. I have raised similar concerns over past delegations and see this instance as unnecessary and unaccountable, even if based in good intentions.

Accordingly, I will vote to approve the majority of the item and dissent on that one piece.

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<sup>3</sup> Letter from Patricia J. Paoletta, Counsel to First Orion, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 2 (filed May 1, 2019).