

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*In re: PTT Phone Cards, Inc., File No. EB-IHD-13-00011669*

I generally support this Forfeiture Order because it is clear that PTT violated a number of our rules. I write simply to question the Commission's perfunctory application of gross revenues as the basis for the forfeiture. In item after item, the Commission cites its "long-established" standard of considering gross revenues. While that may be true, that does not relieve the Commission of its responsibility to give serious and substantive consideration to arguments raised in the record as to why the standard is inappropriate in a given case. Here, the item briefly notes that PTT contended that the Commission should consider its net revenues before summarily dismissing the argument. No attempt is made to rebut the specific points that PTT raised in support of its position.

I have voted for certain Notices of Apparent Liability with the understanding that all counter arguments would be fully considered and addressed at the forfeiture stage. Therefore, it is disappointing to see such a cursory response in a Forfeiture Order. The failure to engage on arguments raised by companies in response to NALs risks leaving the impression that the outcome of an investigation is preordained and a respondent's replies are irrelevant, which shouldn't be the case. Moreover, summarily dismissing concerns about how a fine is calculated could give the appearance that preserving the proposed fine is worth more than setting it at a level that is fully justified and designed to achieve compliance with the rules. While I disagree that monetary penalties should be the focus of the Commission's enforcement process, driving a business to the point of bankruptcy does, in fact, decrease the likelihood of collecting the forfeiture. In this case, the investigation itself prompted PTT to come into compliance. While a fine is certainly warranted, I would have given more consideration to PTT's arguments, albeit not suggesting I would necessarily fully agree per se.