

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

Re: Net One International, Inc., File No. EB-TCD-12-00000418

The evidence shows that Net One engaged in cramming and it is subject to an enforcement action in order to punish such conduct and deter future wrongdoing. At the same time, I disagree that the Commission should issue enforcement actions in the absence of rules. In this instance, the Commission relies solely on section 201 as the basis for this forfeiture order. In my view, the Commission should initiate a rulemaking proceeding to adopt comprehensive cramming rules. Therefore, it was comforting to learn at the recent hearing on Oversight of the FCC before the Senate Committee on Commerce, Science, and Transportation that all five Commissioners support conducting a rulemaking on cramming, and that accomplishing the task is simply a matter of resource prioritization. Taking the time to seek public comment and adopt comprehensive rules on a real problem that is actually impacting consumers is worth the effort to ensure that our actions are on solid substantive and legal footing.

Separately, I remain concerned about how enforcement penalties are calculated, particularly when a company has put forward evidence of an inability to pay. Imposing a \$1.6 million fine for 20 complaints of cramming seems disproportionate to the offense, especially since some of the consumers ultimately were made whole. But the larger problem is how the inability to pay is merely a factor in deciding whether to reduce a proposed fine. If a company has demonstrated that it cannot pay a certain level of fine, then it makes little sense to stick with the original amount. That's about as useful as trying to get blood from a stone, especially from a company that is already subject to an enforcement penalty for a previous offense of the same nature. Revoking the carrier's authorization would be far a more effective solution, particularly to protect additional consumers from unauthorized charges should the company continue to engage in cramming in the meantime.