

Dissenting Statement of Commissioner Michael O’Rielly

Re: In the Matter of SMS/800 Inc. on Request for Inspection of Records, FOIA Control No. 2014-044

I find the FOIA Exemption 4 analysis presented here to be unpersuasive. The majority finds that disclosure of Table 2B is unlikely to cause substantial harm to the competitive position of SMS/800 because the revenue data contained in Table 2B can be derived “to a high degree of accuracy” from rate and demand data contained in other publicly available tariff supporting tables, and is therefore itself substantially available to the public. If this were the case, it would seem that WCB would have redirected the requestor to those publicly available data, as is often done in situations where a FOIA request is not necessary to obtain the specified information, and the matter would have been resolved long ago.

If the Table 2B data were truly publicly available, the analysis could have ended there, but perhaps sensing that this is a shaky proposition, the majority goes on to find that disclosure of the revenue data at issue cannot result in competitive harm to SMS/800 because as the designated sole provider of services to RespOrgs, SMS/800 is not subject to any actual competition and is unable to sustain competitive injury. This determination reveals a deep disregard for the realities of operating a business, and I cannot support it. Even a designated sole provider must operate competitively in order to buy services from others on favorable terms, or maintain its contract, and it has just as much interest as any other carrier in maintaining the confidentiality of sensitive financial information.