

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Broadnet Teleservices LLC Petition for Declaratory Ruling; National Employment Network Association Petition for Expedited Declaratory Ruling; RTI International Petition for Expedited Declaratory Ruling, CG Docket No. 02-278

I support the relief provided in this Declaratory Ruling, which exempts most calls made by or on behalf of the federal government, including tele-town halls, from the Telephone Consumer Protection Act (TCPA). It is frustrating, however, that Federal agencies will be exempt but the Commission leadership left unanswered whether state or local agencies may be subject to TCPA lawsuits. Why is the Commission willing to say the Export-Import Bank is exempt but not the California Health & Human Services Agency, the Carson City Public Guardian, or the New York Department of Education? Such arbitrary line drawing leaves state and local governments, and the people they serve, exposed to predatory TCPA lawsuits that divert tax dollars away from serving the public.

The same justifications used in the Declaratory Ruling to exempt federal government calls would apply to state and local government calls. For instance, the item notes that “allowing the federal government to use autodialers without consent will foster public safety and save resources by allowing government to use the most cost-efficient method of communicating with the public.” State and local governments may also be budget constrained and have equally valid and urgent reasons to contact their citizens. It is interesting that the same Commission that is willing to abuse the statute to “help” municipalities, against my wishes, would not even answer the question of whether they can make calls without the threat of costly litigation hanging over them.

In addition, the Declaratory Ruling notes that “the government would face a significant obstacle if it could not make autodialed or prerecorded- or artificial-voice calls to communicate with participants in federal programs such as Social Security.” The item even goes so far as to state that it can “discern no legal or policy rationale that would justify making it more difficult for the federal government to inform citizens of ways to leave poverty behind or to otherwise contact citizens for similar benevolent purposes.” I am surprised that a Commission majority that just voted to expand outreach to low-income households to encourage every possible recipient to sign up for Lifeline, including by directing USAC to work with state agencies on outreach, would be reluctant to provide relief for state agencies that want to conduct that outreach through phone calls or texts.

When I pushed Commission leadership to resolve the state and local issue, I was told that more research would be needed because it could open the door to unwanted calls from a whole host of agencies—even the dog catcher! I did not find that excuse to be persuasive when contemplating the multitude of beneficial state and local agencies helping our fellow citizens on a daily basis or even in the narrow universe of animal control services. First, if I had a missing dog that was found, I would want to receive that call—even if by autodialer. I would also want to know if there was an outbreak of rabies, and in other scenarios when autodialing or sending texts to residents of a potentially impacted area makes sense, which just so happens is justified under the law. Second, I find it hard to believe that state or local agencies would waste time setting up systems to autodial random residents. If it does happen, fire those employees rather than using TCPA as an arbiter of state and local government actions. Third, even if I receive a stray call now and then, that should not constitute a harm to be remedied through TCPA litigation.

The Declaratory Ruling does not even commit to a timeframe for addressing state and local government calls. The Commission should at least provide an answer so that all impacted parties can plan or act accordingly, or seek appropriate remedy. Instead, leaving the issue in regulatory limbo for the

foreseeable future will potentially expose state and local governments to liability while doing nothing to assist consumers. In fact, some states or localities may simply be forced to discontinue calls, to the detriment of consumers that would have benefitted from such outreach. That is a terrible outcome.