

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*,  
CG Docket No. 17-169

During the previous administration, it was not uncommon for the FCC to interpret statutory provisions in the absence of any rules and in ways that were so novel that impacted companies could not have predicted what conduct would be deemed unlawful. Even worse, these interpretations were frequently announced in enforcement actions, where there is no opportunity for public comment, and then cited as precedent in future items. I objected to this practice, dissenting, at least in part, from enforcement items on numerous occasions. This included several items on supposed cramming violations.

I thank the Chairman, therefore, for initiating a rulemaking designed, in part, to adopt Commission rules regarding cramming. When dealing with more vague statutory provisions, such as section 201 of the Act, it is especially important to have clear rules so that any applicable providers have certainty about what conduct is both covered and prohibited. With the initiation of this proceeding, all interested parties will be able to participate in the process of rule formulation, which should put any new requirements on better footing.

To be clear, when enforcement actions come before the Commission that propose to fine a company both for slamming and cramming for the same transaction, I still prefer to proceed under the slamming violation. I do not find it necessary to impose independent fines for unauthorized charges that are a product of the unauthorized carrier change simply to produce a larger total fine. In those instances, however, where the focus of an investigation is a standalone cramming practice, it will be helpful to be able to point to duly adopted rules as the basis for the enforcement action.

I also appreciate the willingness, even at this early stage, to listen to feedback from stakeholders about the scope and direction of the item and to make corresponding edits. I agreed with several commenters that the discussion on slamming and verification, in particular, needed to be broadened to include additional context about the state of the market, the potential impact on competition and the ability of consumers to switch carriers, and the costs of potential rule changes. I am particularly skeptical about instituting a default preferred interexchange carrier (PIC) freeze, which could impede competition and be burdensome and confusing for consumers, who have come to expect that they can switch providers freely, and in a reasonable amount of time. I appreciate the Chairman and staff for working with me to implement the edits needed to round out the Notice so that we receive a better record on which to proceed.

I will vote to approve.