

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART, DISSENTING IN PART**

Re: *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, File No. EB-TCD-16-00023195, Forfeiture Order.

Based on the material presented, Philip Roesel engaged in a spoofed robocall campaign that was so massive and disruptive that it impaired the critical communications services of a major hospital network. I support a large portion of the Forfeiture Order but take issue with one part.

The Commission's role is to faithfully execute the laws passed by Congress, and, in this case, determine whether Mr. Roesel "intended to defraud, cause harm, or wrongfully obtain anything of value." While it is not entirely clear when each of the latter categories applies, the intent to harm prong features a distinct subjective component. Did Mr. Roesel harm those targeted by his systematic robocalling-spoofing campaign? No doubt; Mr. Roesel himself does not dispute this. Did he *intend* to harm the recipients of his calls? That is a separate question, and the Forfeiture Order does a disservice by conflating Mr. Roesel's presumed knowledge with his intent. While harm was unquestionably a by-product of his robocalling scheme, his general intent seemed to be to sell as many health insurance policies as possible—not to engage in the type of intentionally malicious conduct, such as stalking or scamming, captured by a plain reading of the text. In particular, I do not agree that the mere fact of conducting an illegal robocalling campaign indicates an intent to cause harm. Such a reading would turn the statute on its head and invalidate the need for the intent to cause harm prong at all.

While I fully support and appreciate the importance of cracking down on illegal robocalling, we should not do so at the expense of textual fidelity or in an arbitrary manner. Finding Mr. Roesel liable under such an expansive and imprecise reading of the "intent to harm" prong misapplies the Truth in Caller ID Act and creates legal uncertainty for entities that engage in legitimate types of robocalling. Moreover, since intent to harm constitutes an alternative basis for liability, it is unnecessary to reach the Forfeiture Order's decision.

Accordingly, I approve in part and dissent in part.