

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7

The classification of texting as an interstate information service is a policy decision for which I have long and vociferously advocated. Text messaging clearly meets that relevant statutory definition and does not fall within the definition of “telecommunications services” or “commercial mobile services.” Even in the last instance, text messaging applications are not interconnected, as only those with text-enabled mobile handsets receive these texts. Based on a straightforward statutory interpretation, text messaging should not be subject to common carrier treatment but ought to be rightfully treated as an information service.

Moving away from legalese, wireless providers and their customers deserve the certainty, flexibility, and regulatory environment afforded to Title I services in order to avoid new burdens on existing services and invest, innovate, and deploy the next generation of text messaging services. This action also allows providers to compete effectively with instant messaging services, including WhatsApp, Facebook Messenger, and others that dominate the market. In fact, one report asserts that over-the-top applications make up approximately 75 percent of all text messages.¹ Of course, these apps are completely outside the purview of the Commission’s regulatory tentacles. Our action here clarifies that the text messaging services provided by wireless providers will be treated similarly.

I appreciate that today’s version of the order includes language about the long-standing national policy of not regulating information services, both in the economic and public utility sense, or if established by states. What this means is that the Commission will exert its preemption authority over states when necessary to ensure that the appropriate classification is properly recognized. Further, I am pleased that my colleagues agreed to add language to this item that successor technologies, with similar characteristics to SMS and MMS, including RCS, would be expected to be considered information services. The next-generation of texting services is on the near horizon, and without this statement, our action today would be out of date in the very near future.

For these reasons, I strongly support and vote to approve this order. Now that we have taken this important step, I am hopeful the Commission will also seek to expand this appropriate classification treatment to VoIP and VoLTE.

¹ See CTIA Ex Parte Letter, WT Docket No. 08-7, Dec. 6, 2018, at 2 (citing Pamela Clark-Dickson, Mobile Messaging Traffic and Revenue Forecast Report, 2017-22, OVUM (May 30, 2018)).