

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Swarm Technologies, Inc.*, File No.: EB-SED-18-00026685

I support the underlying item and join my colleagues in making it clear that all entities seeking to launch satellites – no matter how large – and wishing to serve the U.S. market in any capacity must comply with the Commission's rules. The size of the penalty imposed is probably not significant enough to deter future behavior, but the negative press coverage is likely to prevent this company and others from attempting to do this again.

This notwithstanding, I write a separate statement to notify the public, especially those who actively participate in Commission proceedings, that the Commission's Enforcement Bureau may no longer have the final say in the size of consent decrees. While it is now informal policy that the full Commission will consider consent decrees that were negotiated after the adoption of a Notice of Apparent Liability (NAL), there have only been a few occasions where the full Commission has reviewed consent decrees entered into prior to a NAL.

Not long after being circulated and upon the request of two Commissioners, this item was referred to the Commission for consideration by the Chairman. I am always happy to vote on more items and am certainly not reluctant to remove previous delegations to staff, so such a step was welcome news. However, it should be noted that the original penalty negotiated between the party and the Enforcement Bureau was subsequently rejected by my colleagues. I take no real issue with their desire for a higher penalty, except that it is a new and diverging step to jettison an agreement reached between the bureau and a party on the size of a consent decree penalty. This eventually led to a reopening of negotiations with the party and the modification of the item.

Since I have raised concern with enforcement actions serving as precedent without the opportunity for interested parties to comment, everyone should now recognize that when negotiating a potential consent decree with Commission staff that it may be altered or adjusted by the Commissioners. Thus, this factor should be taken into consideration if and/or when any negotiations are initiated. I am hopeful that the Commission will make this change in practice official and well known so as not to surprise anyone in the future.