

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Text-Enabled Toll Free Numbers*, WC Docket. No. 18-28.

As consumers have shifted from calling to texting, businesses have begun text-enabling their toll-free numbers as another means to engage with their customers. The Declaratory Ruling clarifies that the subscriber (the business that holds the toll-free number) is the only entity that can authorize the text-enabling of the number. I generally support the outcome but want to make two points about the Notice.

First, it is not clear, based on the present record, that there is a problem that requires regulatory intervention. The Notice points to a handful of instances where a number may have been text-enabled without a subscriber's authorization, but those examples are contested. Therefore, the record generated in this proceeding will be valuable in assessing the *need* for Commission action. If this is a hypothetical concern or a limited problem that could be addressed through industry best practices, then I will be reluctant to want to expand or create number registries, which would impose new burdens on subscribers and costs on users.

Second, because the Commission has not classified text messaging, the Notice is forced to explain how the administration of text-enabled toll-free numbers does not prejudice the regulatory status of text messaging services. I would like to end the regulatory tap dancing and take the affirmative step of declaring text messaging to be an interstate, information service. To the extent consumers use SMS, it is typically part of an all-distance, unlimited bundle. Increasingly, however, consumers are opting to use a wide range of over-the-top messaging apps. According to one report, just the combination of the apps "[Facebook] Messenger and WhatsApp process 60 billion messages a day, three times more than SMS" – and that was back in 2016.¹ It makes no sense to begin placing antiquated regulatory burdens on a legacy service when consumers are already shifting to new forms of messaging that we have no authority to regulate. I hope the Commission will take up this issue in the near future.

I vote to approve.

¹ Lauren Goode, The Verge, *Messenger and WhatsApp Process 60 Billion Messages a Day, Three Times More Than SMS* (April 12, 2016), <https://www.theverge.com/2016/4/12/11415198/facebook-messenger-whatsapp-number-messages-vs-sms-f8-2016>; see also Deloitte, *Short Messaging Services versus Instant Messaging: Value Versus Volume* (2014), <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/technology-media-telecommunications/deloitte-au-tmt-short-messaging-services-versus-instant-messaging-011014.pdf>.