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

Re: *Long Distance Consolidated Billing Company*, File No.: EB-TCD-14-00017401 NAL/Acct. No.: 201532170015 FRN: 0004337499.

The Commission took a positive step last June when it finally adopted express rules against "slamming" and "cramming," in implementation of section 258 of the Communications Act. This was a vast improvement over the previous administration's approach of relying on vague section 201(b) authority and engaging in retroactive rulemaking through enforcement actions.

While I am glad that we finally have rules on the books, and approve of this item in part, I reluctantly cannot join the item's finding that the company is liable for cramming. According to the reasoning laid out, by changing consumers' carriers without proper authorization, Long Distance *ipso facto* placed unauthorized charges on their telephone bills. In other words, by engaging in slamming, the carrier automatically engaged in cramming as well. But this suggests that both types of conduct can be subsumed under the same anti-cramming rule, and thus logically undermines the purpose of having a separate prohibition against slamming.

Further, as I have said in the past, I am opposed to imposing additional fines for cramming purportedly arising from a slamming transaction, ostensibly for the sake of levying a greater penalty. Doing so is unnecessary and counter-productive, especially when the liable carrier has demonstrated an inability to pay. It would seem to make much more sense—particularly from a consumer protection point of view—to revoke the carrier's 214 authorization than to impose a multimillion dollar fine that could ultimately be merely symbolic.