

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *T-Mobile USA, Inc.*, File No.: EB-TCD-18-00027702.

The pocket-sized technology that nearly everyone carries today is capable of amazing functionality, including the ability to pinpoint exact locations, which has recognizable benefits. Yet, this technology can be used for nefarious purposes as well. The privacy breaches that were reported in the press related to these notices of apparent liability (NALs) are serious and warrant further investigation to determine exactly what happened, whether the parties violated current law, and if so, how such events can be prevented in the future. There is enough evidence contained within these four documents to warrant NALs, and as such I will vote to approve. However, it should be noted that I do so with serious reservations. I would have expected more well-reasoned items than what is presented here, especially given the yearlong plus investigation. Significant revisions and a more in-depth discussion of what occurred will be necessary before I will consider supporting any forfeiture.

Specifically, I am concerned that we do not have all the relevant facts before us, and that we either haven't heard or sufficiently considered counter arguments from AT&T, Sprint, T-Mobile, and Verizon. Not only was additional information filed just days ago, but when the parties discussed these cases with my office, it was readily apparent that the record was incomplete. It is also unclear as to whether the Commission has a firm grasp of the services that were actually being offered to consumers, when these services were offered and/or terminated, and whether many of the location-based offerings included to justify the substantial proposed fines were involved in any actual violations. It also would have been preferable to engage the parties in conversation prior to issuing the NALs, to establish a more solid foundation from which to consider appropriate penalties. The parties appear to have had barely any chance to discuss the potential violations and the legal basis behind the NALs with the Enforcement Bureau's investigators, which undermined their opportunity to explain their underlying practices and ultimately shed more light on the whole situation.

Equally important, I am not convinced that the location information in question was obtained as the result of a "call" or as part of a "telecommunications service," raising questions about the application of our section 222 authority. The item seems to rely on the argument that these companies obtain location information solely to connect the device to the network for the purpose of sending and receiving voice calls. That seems to be a major stretch, because the same connection is needed in order to send data, which is not a telecommunications service under the Commission's sound decision to declare it a Title I service. Beyond the important jurisdictional concern relating to the breadth of our legal authority, more facts are needed to contemplate all of the various applications at issue and how the location information is obtained.

In the end, I am hopeful that these issues can be sorted out, especially when AT&T, Sprint, T-Mobile, and Verizon reply to these NALs. I look forward to developing a fulsome record and discussing these alleged violations with the parties. I want to be clear that I remain open minded on this entire matter.