

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59.

Last Friday, the DC Circuit issued its long-awaited ruling on the Commission's 2015 Telephone Consumer Protection Act (TCPA) Omnibus Order. At the time that Order was adopted, I strenuously dissented against several key components – including the definition of an automatic telephone dialing system (ATDS) and the approach to reassigned numbers. I argued that the prior Commission had misinterpreted the statute and ignored record evidence that the Order's restrictions would prevent legitimate companies from calling customers that wanted to be contacted while doing nothing to stop illegal robocallers trying to scam consumers. In its unanimous opinion, the court generally agreed that the Order was arbitrary and capricious.

In light of this ruling, the Commission and impacted businesses and associations will need to consider how to undo the damage and put our TCPA rules back on solid legal and practical footing. Hopefully, several of the pending lawsuits against legitimate companies will be summarily dismissed by various courts conducting reviews.

Fortunately, nothing about the court ruling or any subsequent Commission action will lead to more *illegal* robocalls. In fact, the Chairman deserves credit for proactively advancing items on call blocking and authentication that try to target calls from actual scammers. As many of us have stated, the Commission needs to remain focused on the bad actors, many of which operate overseas and would have snubbed the mindless 2015 Order just as they have ignored the Do Not Call List, which has become costly and ineffective as well. On the other hand, ideas that were designed to help legitimate businesses operate within the confines of the largely defunct Order need to be reexamined closely and methodically. We certainly shouldn't rush to judgment on any response to the court decision.

For instance, while I support the Commission's efforts to reduce the number of inadvertent calls to consumers who receive reassigned numbers, we have to have real data about the costs and benefits of creating a reassigned numbers database. At the NOI stage, I noted that the true benefit of a database would be to provide legitimate callers a safe harbor from financially-crippling litigation simply because they unwittingly called a number that they thought belonged to a consenting customer. Now that the court has tossed out the prior Commission's illogical approach, and made clear we can decide that callers are not liable unless they have actual knowledge that the number changed hands, there may be less value or need in creating a new database, at least from a legal liability perspective.

Responsible companies may still wish to use a database to keep their call lists up to date and to minimize stray calls. However, I wonder whether the benefit of a new database will exceed the costs of creating it and potentially requiring service providers to keep it or other databases current. Indeed, the idea that we might impose new burdens on a wide range of providers, including those we don't normally regulate, is something that we must be very cautious to cabin to this proceeding. In my view, the most sensible option at this point, if we proceed at all, would be to encourage voluntary reporting to existing, commercially available databases with appropriate legal protections for those that decide to do so. I look forward to reviewing the record in this proceeding.

I vote to approve.