

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

Earlier this year, the U.S. Court of Appeals for the D.C. Circuit took a welcome step in restoring common sense to our agency's interpretation of the TCPA. Among other matters, the court vacated the misguided 2015 decision to impose liability on callers that attempt to reach a consenting party whose wireless number has become reassigned without the caller's knowledge—apart from an “arbitrary and capricious” one-call safe-harbor. Other than creating a windfall for plaintiffs' lawyers, the irrational one-call rule did nothing to solve the problem of reassigned numbers, and instead imposed unfair harms on legitimate companies seeking to offer legitimate services to interested customers.

This Order seeks to undo the previous Commission's defective approach to reassigned numbers by establishing a new comprehensive reassigned numbers database. As I have stated in the past, my preference would have been to utilize existing commercially-available databases, which have improved in recent years, and offer legal protection to those who use them. Our action does not necessarily crowd out those efforts, and there is a chance competition among offerings may develop and produce interesting results. Moreover, to the extent that the purpose of creating the database is to insulate users from liability, it would have been more fitting, in my opinion, to first address the definition of “called party” in the context of the TCPA. After all, should the Commission decide to rightfully re-define “called party” as the intended recipient of the call—rather than the subscriber of the number—the legal liability basis for establishing the database would significantly dissipate. However, I respect the Chairman's decision to take the current approach and have been promised that a comprehensive redo of our TCPA rules will be considered promptly.

Additionally, I am grateful to his office for working with me to insert, at my request, a robust safe harbor in this item. The costs of creating, maintaining, and using the database will be significant, and we simply cannot justify it without providing a corresponding benefit to callers who pay to use it. In all reality, this database will always be imperfect, meaning, despite our action effectively requiring callers to use it, users will still need to be shielded from pointless lawsuits. This is a critical improvement to the item.

While our action today helps in addressing abusive and predatory TCPA litigation, I do remain concerned about the costs of the database for service providers and users. Lessons from the private sector have taught us that requisite database dips to verify reassignment can become cost-prohibitive for businesses. Moreover, as structured in the Order, data dips are likely to surge at certain times and will require additional investments by the administrator in server capacity to handle peak traffic days—the costs of which will ultimately be borne by users. I urge the North American Numbering Council (NANC)—to whom we have delegated substantial discretion to develop a database administration plan—to focus on minimizing costs and burdens for users and service providers and ensuring that it is reasonably affordable for all to use. I also thank the Chairman for agreeing to conduct a comment process in response the NANC's recommendation, and to solicit feedback in response to paperwork burdens imposed by the Technical Requirements Document.

Further, while I am hopeful that the database will accomplish its intended purpose, it would be naïve to think that it will comprehensively fix the reassigned numbers problem. In forming our expectations, we would be wise to keep in mind the costly and ineffective Do-Not-Call Registry, which never stopped bad actors from targeting those on the list. Let's accept fate that, ultimately, only the

honest and legitimate callers will consult the reassigned numbers database—not the criminals and scammers.

Today's action is a positive development in reversing the previous FCC's deeply-flawed 2015 TCPA Order. However, much more work remains, particularly on narrowing the prior Commission's ludicrous definition of "autodialer," and eliminating the lawless revocation of consent rule. I am optimistic that our next steps will go a long way in reading the TCPA in a logical way and limiting wasteful and frivolous TCPA litigation that does nothing to protect consumers or stop illegal robocalls.

I vote to approve.