

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*,
CG Docket No. 17-169.

Almost two decades ago, the Commission commenced a proceeding to adopt rules implementing section 258 of the Act. That provision protects consumers from unauthorized changes to their telephone service provider, and the Commission has enforced its “slamming” rules ever since.

During that time, the Commission has also issued enforcement actions against providers engaged in “cramming,” which is the practice of placing unauthorized charges on a consumer’s bill. And, it has fined providers whose representatives have misled consumers on sales calls. Until now, however, the Commission had not adopted rules regarding either practice. Rather, the Commission has relied upon its general authority under section 201(b) as the basis for such enforcement actions.

My concern with the Commission’s prior approach is that it created uncertainty. Providers did not have sufficient notice of the specific conduct the Commission might deem to be a violation, especially when the statutory provision relied upon by the Commission is so amorphous. Attempting to define a violation through enforcement actions is also troubling because other interested parties have no opportunity to comment as “precedent” is developed. Moreover, as we saw during the prior Commission, section 201 became a catch all for whatever conduct that Commission did not like at the time. This meant that businesses faced liability for practices that they had no reason to know would be deemed problematic until either staff from the Enforcement Bureau came knocking or issued a press release. It was not a model of good governance, to say the least.

For several years, I have advocated that the Commission seek comment on and adopt actual rules addressing these issues. Therefore, I appreciate that the Chairman agreed to do so. While it necessitated an additional process step, and I am mindful of the heavy load already borne by our good staff, taking that step was well worth it to ensure that all interested parties have the opportunity to weigh in on the proposals.

To that end, I am also pleased that the item has been revised to remove discussion of “deceptive marketing” practices. As I have said before, the Commission does not have statutory authority over deceptive marketing, so it is not empowered to adopt rules on the subject. That seemed to be a holdover from the prior Commission, so I am glad it was excised from the document. Finally, I appreciate that the circulated draft has been beefed up on two points that I’ve raised repeatedly: cost-benefit analysis and suspending carriers or revoking authorizations of bad actors that do not comply with our rules.

I approve.