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VIA EMAIL

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Dear Chair Prozanski, Vice Chair Thatcher, and Members of the Oregon Senate Committee on the Judiciary,

As a former Commissioner for the U.S. Federal Communications Commission ("FCC" or "the Commission"), I dedicated a significant portion of my tenure to understanding and addressing the evolving landscape of communications, with a particular focus on balancing consumer protection and the practical realities faced by businesses. It is with this background and perspective that I believe it necessary to share my initial thoughts regarding the proposed HB 3865A and its potential, unintended consequences.

One of the persistent challenges I observed at the FCC was the way in which well-meaning regulations, such as the Telephone Consumer Protection Act (TCPA), could be, and often were, leveraged in ways that disproportionately affected law-abiding businesses. While the TCPA was enacted to shield consumers from unwanted telemarketing calls and texts, its broad language and interpretations by the courts have created an environment ripe for opportunistic litigation. There is a concerning trend for plaintiffs' firms aggressively pursuing claims based on the mere time of day a text message was delivered, even when the recipient had provided explicit written consent to receive those very messages. This isn't about stopping the nefarious actors who bombard consumers with illegal and fraudulent communications; instead, it often becomes a tactic to extract settlements from legitimate businesses that are diligently working to engage with customers who have willingly opted in. The FCC is currently considering the issue of how quiet hours can be applied in the mobile context and has been asked to reaffirm its long-held view that consumers who have given prior express written consent should not be able to claim damages

based solely on the “quiet hours” provision. The underlying principle here, one that I strongly supported during my time at the Commission, is that individual consent fundamentally alters the nature of the communication and its regulatory treatment. If a consumer has willingly agreed to receive messages, they can unsubscribe from those messages rather than clog our courts with unnecessary and frivolous litigation.

This issue of opportunistic litigation is directly relevant to HB 3865A, particularly when considering the complexities of regulating mobile technologies at the state level. The bill’s attempt to impose Oregon-specific regulations, such as quiet hours and message limitations, creates a **compliance nightmare for businesses with a national customer base** due to a fundamental technological constraint: **the inability to reliably access the real-time location data of mobile phone users**. In today’s interconnected world, consumers have the opportunity and do freely relocate across state lines, and their phone numbers are not tied to a fixed geographic location in the same way that landlines once were. A business sending a text message through a national carrier simply does not have a mechanism to determine if the recipient is currently located within Oregon at the precise moment of delivery. This makes it practically impossible to comply with location-based restrictions for wireless phones. Imposing such requirements sets up well-intentioned businesses for potential violations and legal challenges through no fault of their own operational capabilities. It's a regulatory framework built on a flawed premise of readily available location data.

Meanwhile, recognizing that encouraging serial plaintiffs to litigate law-abiding American businesses into oblivion will not stop bad actors that are initiating scams targeting Americans (often from overseas), the FCC has been actively and specifically addressing the problem of unwanted and illegal robotexts by implementing technical solutions that compel direct action by the nation’s wireless carriers. For example, recognizing the increasing volume of these harmful messages and their potential for fraud and identity theft, the Commission recently adopted a Report and Order mandating that all mobile wireless providers block certain text messages that are highly likely to be illegal. A key component of this action is the requirement to block texts purporting to originate from numbers on a reasonable Do-Not-Originate (DNO) list, which includes invalid, unallocated, or unused numbers, as well as numbers for which the subscriber has requested blocking. This can be a crucial step in stemming the tide of scam texts at the network level, before they even reach consumers’ devices.

It is important to note the FCC’s strategic focus in this area. **The priority has been on targeting texts that are highly likely to be illegal**, meaning those sent without the necessary consent or those that are spoofed or fraudulent. This approach acknowledges the legitimacy of businesses communicating with consumers who have provided their **prior express consent**. The aim is to eradicate the unwanted and harmful messages without unduly hindering the ability of businesses to connect with their willing customers. As I have noted, once a consumer has consented, their direct remedy if they are disturbed by the timing or frequency of messages is to revoke that consent. This places the control squarely with the consumer, which is a sensible and balanced approach.

This brings me to the specific concern regarding HB 3865’s proposed regulation of **Rich Communication Services (RCS)**. Oregon would, to my knowledge, be the **first state to expressly regulate RCS in this way**. This is a significant departure from the federal landscape,

where the FCC has made it clear that **RCS is not currently subject to federal telemarketing regulations**. RCS represents a more advanced messaging protocol than SMS or MMS, offering enhanced features like higher-quality media sharing, read receipts, and improved security. Imposing state-level regulations on RCS, treating it as analogous to SMS and MMS for telemarketing purposes, not only disregards its distinct technological characteristics but also creates another layer of regulatory complexity for businesses attempting to utilize this evolving technology to better serve their customers. Critically, the same limitation regarding the **inability to determine the real-time location of an RCS message recipient** applies here as well. Therefore, subjecting RCS to Oregon-specific rules based on location is equally impractical and problematic. Such regulations could stifle the adoption of RCS by businesses in Oregon and beyond, hindering their ability to leverage its benefits for customer engagement and potentially putting them at a competitive disadvantage.

Moreover, creating a patchwork of state-specific regulations, however well-meaning, on mobile messaging technologies like SMS, MMS, and potentially RCS is not a sustainable or effective approach. It places an undue burden on legitimate businesses that operate nationally, forcing them to navigate a complex web of potentially conflicting requirements. The inability to access real-time location data makes compliance with state-specific timing and delivery restrictions virtually impossible. This regulatory fragmentation ultimately benefits no one, least of all consumers, who are best protected by a consistent and targeted federal approach focused on eliminating illegal and unwanted communications at their source while respecting consented interactions.

I would strongly urge the members of the Oregon Senate Labor and Business Committee to carefully reconsider the aspects of HB 3865 that impose location-based restrictions and regulate emerging technologies like RCS. Aligning with the federal strategy of targeting unconsented messages and supporting network-level blocking of illegal texts would be a far more effective way to protect Oregonians without inadvertently penalizing law-abiding businesses and creating an unworkable regulatory environment. My understanding is that Oregon has a vibrant business community, and it is crucial to foster a regulatory landscape that supports responsible innovation and growth while effectively addressing the issue of unwanted communications.

Thank you for your continued attention to this important matter.

Sincerely,

Michael O'Rielly
Former Commissioner
Federal Communications Commission