STATEMENT OF
COMMISSIONER MICHAEL J. COPPS, APPROVING IN PART, CONCURRING IN PART

Re: *In the Matter of Leased Commercial Access, Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Docket 07-42.*

The express statutory purpose of leased access is to give independent programmers an opportunity to obtain cable carriage at reasonable rates in order to promote competition and "the widest possible diversity of information sources." Thus, Congress intended leased access to contribute to the diversity of voices that is so central to the proper functioning of our media and, ultimately, to our democracy itself.

Unfortunately, those purposes have rarely been realized. In our most recent annual cable price survey, the Commission found that cable systems on average carry only 0.7 leased access channels. This Order tries to remove several obstacles that may be hindering the use of leased access capacity, including clarifying the information that cable operators must be prepared to provide in response to inquiries, and the time in which it must be provided.

Another obstacle cited by independent programmers is excessive rates. The Order adopts a new methodology that will lower the rates and make them more affordable. One important caveat is that we do not yet extend the lower rate to programmers that carry primarily sales presentations and program length commercials. These programmers often "pay" for carriage -- either directly or through some form of revenue sharing with the cable operator. Lowering the rates for these programmers could cause them to simply migrate to leased access from elsewhere on the cable system because it is less expensive than their current commercial arrangements. Migrating from one part of the cable platform to another would not increase programming diversity. I thank my colleagues for their willingness to examine this issue in a Further Notice.

Finally, while I am generally in favor of ensuring that complainants at the Commission have the information they need to prove their case, as in the recent program access proceeding, I believe that the discovery procedures adopted in this item go too far, and, paradoxically, not far enough. They go too far in establishing a bare "relevance and control" standard for discovery requests with no apparent limits on requests that are duplicative or unduly burdensome. I fear that these rules will embroil the Commission in an endless stream of discovery disputes. On the other hand, I believe the decision does not go far enough because if we are going to liberalize our discovery rules, it ought to apply to other contexts – such as cases dealing with petitions to deny broadcast station license renewals and transfers. I hope that parties in other disputes file waivers with the Commission asking for liberalized discovery. If sunshine is the best disinfectant, we ought to let the sun shine into every nook and cranny of the Commission.

I thank the Bureau for their work on this complex subject, and hope that the rules we adopt will help at long last to turn leased access into a viable and diverse outlet for independent programming.