

**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41.*

Today's item takes up the cause of independent programmers, who want all of the benefits of cable distribution, including advertising revenues, while also seeking to prohibit certain distributor limits and acquire the ability to completely bypass their cable agreements to self-distribute. I understand why independent programmers would want this, it just shouldn't be the role of the government to further it. In the end, I suspect that this effort will not be as fruitful as anticipated, as independent programmers will face more difficulty getting underlying carriage, thereby reducing their viability and longevity. That means there will be fewer diverse programming sources, not more.

I do have some sympathy for independent programmers. They seek to fill niche consumer programming interests, often without diverse financial backing. In today's media environment, it's certainly difficult to generate such programming, survive a whirlwind of changing consumer tastes and technologies, and make the overall finances work. At the same time, distributors often take a chance to carry such independent programming when it would be easier and perhaps more lucrative to carry other channels. In exchange, distributors seek certain conditions to justify their risks of carriage.

With this item, the Commission seeks to improperly jump into the middle of programmer/distributor relationships and eliminate certain practices that the independent programmers have in the past – and continue to – voluntarily accept during private commercial negotiations. To argue that these are not free negotiations because it is an unbalanced negotiating table completely ignores the fact that such circumstances exist in so many other parts of our economy. For instance, if you want your product to be carried by Walmart, Marriott, or Home Depot, you have to deal with the potential for an unbalanced negotiating table. That is not illegal, inappropriate or necessarily worthy of government involvement.

Complicating this item is the simple fact that it is an extension of the conditions imposed on the merged Charter Communications in its acquisition of Time Warner and BrightHouse. Having been totally shut out of any involvement in the crafting of those conditions, I am now being told that we must burden the entire industry with the same. At least Charter got something in return for acquiescing to such market interference.

Some will argue that this item is merely an NPRM and thus just asking questions. But this Commission, under this leadership, has proven that sentiment totally laughable. Just think about this very subject matter. We were told that the NOI was to be very vague and sit out there for quite a while before any action was contemplated. And yet, here we are with a determined outcome and a march to completion.