STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage (MB Docket No. 07-42)

Today the Commission is launching this *Notice of Proposed Rule Making* to determine whether the current commercial leased access regime is working or needs improvement, or whether "leased access" – as implemented by the Commission and the cable industry – amounts to "least access." To answer these questions, this *Notice* seeks comment specifically on the Commission's complaint and dispute resolution process, the rate formula, channel placement, elective or mandatory arbitration, and the impact of advanced digital services, such as video-on-demand, on commercial leasing.

There is a strong interest and demand among independent programmers across this country for leasing opportunities, and Congress gave the Commission authority to ensure that such opportunities remain available and viable. The Commission has a statutory obligation to use commercial leased access as a means "to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are available to the public from cable system in a manner consistent with growth and development of cable system." 47 U.S.C. § 532(a). But Commission rules and practices have made it prohibitively expensive and unnecessarily burdensome for most independent programmers to obtain and maintain leased access.

For instance, while the Commission has developed a rate structure that allows cable operators to gain full compensation for all potential costs or risks associated with providing leased access to independent programmers, some cable operators may not be offering independent programmers a reasonable, justifiable rate for access.[1] And, while there will always be good faith disputes between cable operators and programmers, the Commission does not have mechanisms in place to ensure prompt resolution of complaints. It should not take the Media Bureau nearly two years to respond to a programmer's leased access complaint.[2]

I am thankful to Chairman Martin and my colleagues for agreeing to launch this leased access proceeding and to take it to a final order within a reasonable period of time. Commercial leased access, as envisioned by Congress in 1984 and then broadened in 1992, has the potential to increase the diversity of programming available to cable subscribers. I strongly encourage commenters to offer real solutions that could help us achieve that congressional objective.

[1] It would be helpful to the Commission for commenters to submit comments in response to the following questions: What rates do the cable operators charge for full-time and part-time leased access? What are the average maximum leased access rates? How do cable operators justify any variances in rates? Are the rates reasonable in light of the fact that cable operators have larger channel capacity than they did in 1997, and thus perhaps there is less scarcity? Has the rate formula decreased anticompetitive practices? Has the rate formula increased use of leased access channels which promote diversity? Do the current rates established by cable operators under the Commission's regulations deter non-affiliated programmers who otherwise would seek access? Is the method for calculating the maximum rate appropriate for digital cable, VOD, and IPTV?

[2] *See United Production v. Mediacom Communications Corp.*, *Order*, Media Bureau, CSR 6336-L (adopted January 26, 2007, DA 07-273). The Petition for Commercial Leased Access was filed on February 25, 2005.