STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

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

I am pleased to support this item which deals with the Commission's commercial leased access rules.

When I requested that we launch this proceeding to reform the current leased access regime, I did so for two reasons. First, I had heard that many small and independent creators of local and diverse programming could not gain access to and carriage on their local cable systems. And second, while Congress explicitly required the Commission to ensure that leased access opportunities remain available and viable, our rules and practices over the years have made leased access unnecessarily burdensome and, in some instances, prohibitively expensive for many independent programmers.

I am, therefore, pleased that the instant *Order* addresses these problems. As the initiator of this proceeding, I would like to thank my colleagues for supporting this thoughtful item. I particularly would like to thank Chairman Martin for heeding my request and following through on our agreement in the *Adelphia* transaction to bring this proceeding to a final order. Given that the Commission's experience with managing leasing arrangements in media is limited to commercial cable leased access, the rules we consider and implement here today should set the baseline standard for any other media leasing arrangement contemplated by the Commission.

Today's *Order* makes remarkable improvements to our commercial cable leased access rules. We first adopt uniform customer service standards to remedy the lack of a consistent and fair treatment of actual and interested leased access programmers. We then reduce the potential expense and burden on a programmer associated with filing a complaint with the Commission about an alleged violation. To ensure that we better monitor leased access practices and the effects of our rules, we adopt an annual reporting requirement for cable operators and we invite leased access programmers to comment on the information provided by cable operators.

As the underlying record shows, the inconsistent and unpredictable treatment of leased access programmers has impeded their ability to lease cable channels. Considering that many part-time leased programmers are small, community-based operations, the difficulty to obtain basic information about leased access opportunities can create an unnecessary barrier of entry. I believe that the Commission must take appropriate steps to facilitate the entry of new and diverse programmers in a manner that has been specifically authorized by Congress.

Leased access programmers should be able to request and then obtain information about rates, terms and conditions in a timely manner. Today, we reaffirm that cable operators have an obligation to reasonably accommodate these requests. Accordingly, we conclude that within three business days of an initial inquiry, a cable operator must provide the prospective leased access programmer with information about, for example, the leased access process and procedures for that specific cable system, the availability of time and leased access channels, the attendant schedule and calculation of rates, and the acceptable methods of delivering leased access programming to the cable operator.

Providing this information to prospective leased programmers does not impose an undue burden on cable operators. In fact, I believe that the service standards we adopt today should simplify the entire leasing process, as all leased access inquires will be treated in a predictable and timely manner. The new and clear standards will set the expectations of prospective and current leased access programmers, and cable operators. Moreover, the information that programmers receive after their initial inquiry should empower them with sufficient information to determine whether commercial leasing is an opportunity worth pursuing.

In addition to new consumer service standards, I believe this *Order* improves the complaint process in certain important respects. As I said in the underlying Notice of Proposed Rule Making, "there will always be good faith disputes between cable operators and programmers, [but] 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.[1]" Hence, pursuant to this *Order*, we will codify a rule that requires the Media Bureau to resolve all leased access complaints within 90 days of the close of the pleading cycle, which requires the respondent to reply to a complaint within 30 days. Also, we reduce the expense of filing a complaint by eliminating the requirement for a complainant to obtain a determination of the cable operator's maximum permitted rate from an independent accountant before filing a complaint alleging a rate violation. Finally, the expanded discovery rules we adopt in this *Order* will enable leased access programmers to support complaints of alleged rule violations or unfair treatment.

While I am pleased with the outcome of this Order, I would have preferred that we first solicited meaningful public comment and review on the new rate methodology adopted here. To be frank, the methodology was invented by staff out of whole cloth without sufficient public input, independent review or any transparency. I received much of the details only late last week, right before the Thanksgiving holiday and right after Sunshine closed. As with any new pricing formula, its reliability and accuracy are directly correlated to the extent to which it has undergone rigorous examination and independent review. To my knowledge, neither has occurred in this case. Indeed, good government cautions us to seek comment before adopting a new, industry price regulation. All stakeholders have a right to see and comment on the specific formula on which we intend to rely. To be sure, I actually like the outcome – a maximum leased access rate of 10 cents per subscriber per month for any cable system. But as an expert governmental agency, it is incumbent upon us to provide regulatees with a process that is fair and open, and inspires confidence in the American people and the courts.

I am, however, satisfied that we do not apply this new rate methodology on programmers that predominately transmit sales presentations or program length commercials, but rather seek comment on these issues. It is also appropriate that we provide a 90 day delay in the effective date of the new formula so that all parties can have opportunity to inform us of any concerns or file petitions for reconsideration. This remedies the deficient notice sufficiently for me to support the item.

I am thankful to my fellow Commissioners and Chairman Martin for ensuring that this item was finalized within a reasonable period of time. I also want to thank the commenters for offering real solutions to this process and providing insight needed to ascertain the breadth of this item and the intricacies of how the process should work. I am hopeful that this *Order* today will help us reach both Congress' and our goal in having more diverse cable programming.

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[1] *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.