

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL  
APPROVING IN PART AND CONCURRING IN PART**

Re: In the Matter of Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.; Oceanic Time Warner Cable, a division of Time Warner Cable, Inc., Oceanic Kauai Cable System; Oceanic Time Warner Cable, a division of Time Warner Cable, Inc., Oceanic Oahu Central Cable System; Cox Communications, Inc., Fairfax County, Virginia Cable System; File Nos. EB-07-SE-351, EB-07-SE-352; NAL/Acct. Nos. 200832100074, 200932100001, 200932100002, 200932100003, 200932100008, 200932100022, and 200932100023; *Order on Review*

The Commission through this Order appropriately determines that the migration of programming to a switched digital video (“SDV”) platform does not violate Sections 76.1201 or 76.640(b) of our rules. Deployment of SDV technology to deliver video programming is consistent with the plain language of the regulations. It also can serve the public interest by allowing cable operators to comply with the Commission’s “viewability” rules and deliver more programming options, including HD channels and niche programming, without displacing significant numbers of existing channels.

I only concur, however, with respect to the determination that the SDV deployment requires notification to local franchising authorities and customers. Whether the SDV deployment here – because of its effect on the channels accessible to certain subscribers who purchased unidirectional digital cable devices on their own in the retail market – constitutes a “change in service” requiring notice under Section 76.1603(c) is not without some doubt. Nevertheless, the broader ramifications of our decision here for the industry’s deployment of SDV technology, which has largely been on hold since the enforcement proceedings became public, justify resolution of these issues now.