

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-198

Today's Order is a very positive development for American consumers. In enacting Section 628 of the Act, Congress sought to, among other things, "increase[] competition and diversity in the multichannel video programming market," and to "spur the development of communications technologies." By developing a mechanism through which competitors can gain access to programming that has been unfairly withheld, we hopefully will put an end to a practice that undermines our congressional mandate.

It makes little sense in today's market to have two wholly distinct rules for satellite- and terrestrially-delivered programming. There is nothing inherent in either mode of delivery that ensures that there will be adequate competition in the MVPD market. Indeed, most consumers likely have no idea by what means any given network is delivered; what they do understand, however, is which providers actually carry the programming they most desire. The result, therefore, is that those operators who do not have access to critical programming may fail to produce the meaningful competition and diversity envisioned by Congress.

As the Order itself notes, the best example of the problem we address today is the practice of withholding access to Regional Sports Networks. There is no secret why vertically-integrated operators would choose to withhold such programming . . . it is a make-or-break proposition for many consumers. They simply would not switch to a competitor who does not offer that programming. In my view, not only do these actions severely limit competition, including the opportunities of new entrants, but also they can serve as a way in which an MVPD can gain a stranglehold on the market without having to innovate in other ways that meet consumer demands. So, instead of lowering prices, improving customer service, or generating new and diverse programming due to competitive pressure, an operator can simply withhold access to important programming it owns in some form or fashion, and watch its competitors scramble to stay afloat.

The bottom line is that under our prior regime, consumers were caught in the crosshairs and have been the ultimate losers in an unfortunate battle among MVPD competitors. Section 628 aims to eliminate such a result, and I am pleased that we have developed a thoughtful approach to this chronic problem.

I thank both the Media Bureau and the Office of General Counsel for their fantastic work on this item. You approached the item with an open mind and therefore were able to make some important improvements to it as the process unfolded. Your work has been exemplary and the end product is a reflection of your expertise and your commitment to ensuring competition that will benefit the American people. Thank you.