DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57; *Applications of AT&T, Inc. and DIRECTV For Consent To Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90

While I appreciate my colleagues willingness to discuss my concerns and listen to efforts to fix this flawed course of action, I must strenuously dissent to today's order in which Commission generally affirms, with some changes, the staff's determination allowing access to highly confidential agreements in the Comcast-Time Warner and AT&T-DirecTV merger proceedings and setting forth when and how they will be provided to third parties. The documents at issue contain the extremely sensitive pricing and term information of America's leading programming content producers—a crown jewel of American creativity and a major American export to the world marketplace.

I am not convinced that access to such materials by outside parties is necessary for consideration of the pending merger transactions, especially given the risks at stake and because the Commission has not disclosed these agreements in the past. I have been told that disclosure is necessary to ensure compliance with the Administrative Procedure Act, which is a dubious reading of the statute and questionable justification as the Commission has ignored it numerous times of late. I also find it duplicitous to suggest that disclosing the market-sensitive information of content creators is acceptable, while it is permissible to withhold information about certain secretive *ex parte* meetings held on the topic.

Moreover, the content producers are not parties to the transactions and their rights cannot and should not be trampled over for some ulterior political goal. No matter how safe or protected this information may seem, you can never promise with any level of certainty that the information won't get out in some form or be used in separate proceedings: This bell cannot be unrung. To me, this appears to be more of a fishing expedition by interests groups and competitors to obtain market-sensitive information. Thus, this action could clearly result in irreparable harm and I hope that some court will recognize this.

I also cannot agree with the about face on our longstanding presumption that sensitive documents would not be disclosed until any challenges were reviewed by the Commission and, if appropriate, a court of competent jurisdiction. Suddenly, last Tuesday's orders altered our normal course to inexplicably provide access to such documents after the Media Bureau responds to any challenge in favor of the party seeking disclosure. Affected parties should have the ability to exercise their rights to protect sensitive information if they wish. At least today's item makes some minor modifications to the protective orders, which will allow programmers seven days to obtain a stay from the court and prevent disclosure of these agreements online. Placing sensitive agreements online would have been reckless so it is an improvement that these documents will be visible only in the offices of the submitting parties, but it highlights how outrageous making these documents accessible is in the first place.