

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-42.

In reading the item as originally circulated, there were a number of edits I believed were needed and appropriate. One of the first of these was some slightly more concrete language in the statement of the primary goal of the proceeding. The avowed goal is to “begin a conversation” on the state of independent and diverse programming, and I asked to change “begin a conversation” to “seek information,” which in my view is a more appropriate goal for an inquiry of a federal regulatory agency. Of all my proposed edits, this seemed like one of the easiest lifts, but surprisingly to me, this minor wordsmithing request was denied, more than once, in fact. Which left me to wonder why the Commission majority was so deeply wedded to this innocuous-sounding phrase, “begin a conversation.” And the more I thought about it, the more it became clear that “beginning a conversation” is a completely inaccurate description of what is happening here.

“Begin” implies that this is somehow a novel topic that interested parties have not had an opportunity to weigh in on yet. However, as anyone who has ever followed media regulatory issues is aware, the debate around program carriage, or lack thereof, is as close as it gets to a constant fixture. For almost as long as there have been cable and satellite systems, programmers have been arguing that they need more carriage. We should all be able to agree that this “conversation” has been going on in some form at least since 1989, when the Commission’s cable competition NOI included several timeless assertions, for example: “[s]ome program suppliers also complain that rising concentration in cable system ownership has led to their inability to gain access to large cable systems.” Programmers have found many sympathetic ears to their complaints both in Congress and at the Commission over the decades. From the “leased access” system established by the 1984 Cable Act and the program carriage requirements of the 1992 Cable Act, to the Commission’s 2011 modifications to its carriage rules and its common insistence on further carriage requirements as a condition of MVPD mergers, there have been numerous legislative and regulatory attempts to address the challenges faced by independent programmers from many different angles.

The technology has changed a lot since the debate began, but the arguments haven't changed substantially. We're now living in an age of thousand-channel MVPD lineups. And many consumers seeking a different structure are rapidly adopting robust over-the-top offerings of linear and on-demand programming alike. Additionally, compelling content is being monetized to previously unimagined degrees on the web and mobile devices. In a world that has brought us this explosive growth in the sheer number of potential platforms for content, it is interesting that access to the old network is still considered a major issue, but with this debate it seems the more things change, the more they stay the same.

So if this item is not beginning a new conversation, what in fact is it beginning? Many of you interested have, of course, not been able to read the document yet, but it should not come as a spoiler to say that what we are beginning is more accurately described as the latest regulatory push. Though billed as a simple NOI laying out some questions to give a platform for more dialogue, almost every paragraph in the original draft was slanted in the direction of that push. I appreciate that many of the edits I and Commissioner Pai submitted to try to add some requisite balance were actually accepted, and so it allows me to concur with the item. Ultimately, I hope that these edits will help steer the proceeding into conversation territory.