

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *San Fernando Cathedral of San Antonio, Texas Application for Review*, CGB-CC-0949, CG Docket No. 06-181, Memorandum Opinion and Order.

While I am sympathetic to many of the arguments advanced by San Fernando Cathedral of San Antonio, Texas (San Fernando), I agree with the Commission that its Application for Review should be denied. As explained in the *Order*, pursuant to the standard adopted by the FCC in 2011, San Fernando failed to provide the Commission with sufficient evidence to obtain an individual exemption from closed captioning requirements based on economic burden. That having been said, I believe that the 2011 standard is probably too stringent, at least as applied to religious organizations, and would be open to revisiting it in an appropriate proceeding.

San Fernando separately argues that applying our closed captioning rules to it would run afoul of the First Amendment. Given relevant U.S. Supreme Court jurisprudence, most notably, *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), the Commission correctly rejects that claim. We would have faced a closer question had San Fernando argued in its Application for Review that requiring the church to close caption its Sunday Mass broadcast violated the Religious Freedom Restoration Act (RFRA). But San Fernando did not advance that claim before the Commission so we appropriately do not address that issue here. Nothing in our *Order* therefore should be interpreted as speaking to the interplay between RFRA and our closed captioning requirements.