

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311

The market for communications services is dramatically changing before our very eyes, making many parts of current law and Commission regulations vastly anachronistic. *Unregulated* over-the-top providers have achieved enormous popularity and success. For this and other reasons, I have endorsed efforts by Congress to rewrite the Communications Act, particularly Title VI, which governs a significant portion of the video services offered by traditional video providers. Moreover, I have pushed the Commission to update its own rules and internal structure to reflect the current and future marketplace for video and other services. With such a dynamic video marketplace and a shrinking role of franchise authorities, it is unsurprising that the latter entities are under intense pressure – both financial and political – to expand their reach outside their respective jurisdictions into various businesses and activities of local video franchisees. But such unauthorized expansion is wrong and must be curtailed.

After a remand from the United States Court of Appeals for the Sixth Circuit, this item appropriately and justifiably starts the procedural steps to prevent the overreach of franchise authorities in two instances. First, it correctly proposes to count cable-related “in kind” contributions against the cap on franchise fees. The absence of such a limitation leaves franchise authorities with the ability to end-run the fee cap, making a mockery of the law. And this isn’t simply a theoretical issue, as there are concrete instances in which franchise authorities have already abused their powers to force these “contributions.” Beyond violating their legal authority, such efforts have many destructive impacts, including directly increasing consumer costs and indirectly harming the ability of providers to deploy and offer service.

Second, the item properly seeks comment on the tentative conclusion that franchise authorities cannot impose regulatory burdens on incumbent non-cable services. Title VI only authorizes franchise authorities to oversee or regulate certain aspects of cable services, not other portions of a cable provider’s business. Without our action today, which is consistent with past Commission rulings, franchise authorities would be emboldened to intervene, impose mandates, extract concessions and more on host of services outside the scope of Congress’ directive. In fact, absent our action, it’s hard to see any boundaries to the meddling of franchise authorities, creating the perverse circumstance in which such non-cable services could be regulated by multiple governmental layers, generating confusing and conflicting obligations.

Consistent with this approach, I am pleased that the Chairman added my request to seek comment on whether statewide cable provider franchises should be subject to similar limitations as those enacted for local franchise authorities. Authorizing or implementing statewide franchising doesn’t eliminate the possibility of the same type of overreach inflicted by local franchise authorities, and we must curtail these efforts as well.

Lastly, I appreciate Chairman Pai’s willingness to expand our media modernization effort for cable services beyond the fairly technical items. Until recent life events took over, I had been working on a project to outline significant, substantive reforms that the Commission can and should pursue to reflect the current marketplace. While critical, some of these actions may require alterations of law, but doing so would provide a pathway for Congress to consider the same, if it was so inclined.