

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, MB Docket No. 17-264; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105; *Revision of the Public Notice Requirement of Section 73.3580*, MB Docket No. 05-6.

In my previous statement on this matter, I noted that I would oppose any attempts to increase burdensome disclosures, set litigation traps, or muzzle the First Amendment rights of broadcasters, and I am pleased to say that the Report and Order before us today by-and-large finds the right landing spot on all three points. Additionally, while the draft item circulated three weeks ago was unnecessarily regulatory and would have imposed costly burdens, calling into question the value of the effort, I thank the Chairman and staff for working with my office to fix these issues. The item is now a simpler, fairer media modernization item, and one that literally brings disclosures into the digital age.

While many believe the underlying law to be constitutionally suspect, this item fulfills our statutory mandate and defines acceptable digital disclosures in a way that is analogous to the existing rules. Instead of taking up print space in competing local newspapers—to the extent that such papers even still exist—the new rules will simply require publication on a station website, or an alternative website in certain cases. The Commission's determination that the website may serve as the digital equivalent of the newspaper for purposes of fulfilling application notice requirements is a very reasonable and text-based reading of the law. Having already expressed suspicion on First Amendment grounds of a prescriptive formula specifying how stations must comply with notice rules, I was taken aback by suggestions by certain commenters that the Commission pinpoint exactly *where* on the webpage the disclosures are to be posted. In addition to being far too prescriptive as a matter of public policy, this proposal raised clear constitutional problems.

I thank the Chairman for including my proposed edits that provide greater flexibility for digital disclosures, keeping the application notification rules in line with other disclosure obligations, such as those pertaining to contest rules, online public inspection files, Equal Employment Opportunity public files, and closed caption contact obligations. While I remain skeptical of the requirement to maintain permanent links on websites even when no applications are pending, I would firmly note that this is not in any way intended to create a new source of liability. Any attempts to turn this feature into a compliance trap would be contrary to this Commission's decision, completely wrongheaded, and based on constitutional quicksand.

Some commenters also sought to extend application notice requirements to station apps, but this approach was faulty for several reasons. First, as a practical matter, many stations that utilize apps actually do so through third parties such as iHeartRadio or TuneIn and Radio.com, and the complexity of placing and maintaining disclosures on such apps would be extraordinarily cumbersome at best. But, it is also important to note that the current market for mobile apps is very fluid in terms of design and functionality, and building app requirements into the regulation would be shortsighted and likely outdated in short order. Further, it would be counter-productive for the Commission, in seeking to modernize its regulations and reduce unnecessary burdens on financially challenged broadcasters, to ultimately *increase* compliance burdens. Moreover, the burden of compelling broadcaster speech in this way would far outweigh any benefits that could possibly result.

All in all, this item should ease burdens on broadcasters, even if I would have preferred a far, far less prescriptive item. I thank the Chairman for bringing this item to order and look forward to further actions to reduce regulatory hurdles in the coming months.