

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Leased Commercial Access, MB Docket No. 07-42; Modernization of Media Regulation Initiative, MB Docket No. 17-105.*

If there was ever a poster child for the benefits for our Modernization of Media Regulation Initiative, it would be our leased access rules. Through this initiative, we've ended a more-than-ten-year state of legal limbo that resulted from the FCC's *2008 Leased Access Order*, which long ago was stayed by the United States Court of Appeals for the Sixth Circuit and disapproved by the Office of Management and Budget under the Paperwork Reduction Act. We've modernized many of our leased access rules to reflect the vast changes that have occurred in the video marketplace since these rules were first adopted decades ago.

And today, we revise our leased access rate formula to reflect the regulatory framework that is in place today instead of, I kid you not, a broader rate regulation regime that the Commission got rid of way back in 1999. That's right; our leased access rate formula has relied on the principle of "tier neutrality," but the Commission abandoned that principle when it ceased regulating cable programming service tier rates 21 years ago. Moreover, our current rate formula is both unnecessarily complex and doesn't reflect the actual value of a leased access channel. As a result, it's not surprising that no commenter opposes the simplified, tier-specific rate formula that we adopt today. This new formula better reflects the value of a leased access channel, will reduce unnecessary burdens on cable operators, and is consistent with our overall regulatory approach. In short, this modernization effort is simply good governance.

In this proceeding, we also teed up the question of whether cable leased access requirements remain constitutional in light of recent changes in the video marketplace. Given the proliferation of video outlets, particularly online streaming platforms, I have serious doubts that leased access mandates placed on cable operators continue to be consistent with the First Amendment. Whether one applies strict scrutiny or intermediate scrutiny, there is a strong argument that leased access requirements place unjustified burdens on speech. I hope that the courts will address this issue in due course.

My sincere thanks go to the Commission staff who worked on this item: from the Media Bureau, Steven Broecker, Michelle Carey, Katie Costello, Maria Mullarkey, Nancy Murphy, Holly Saurer, and Diana Sokolow; from the Office of Economics and Analytics, Eugene Kiselev and Andy Wise; from the Office of Communications Business Opportunities, Belford Lawson; and from the Office of General Counsel, Susan Aaron. With this Second Report and Order done, I hope that you all enjoy some well-deserved time off, viewing whatever you please on the numerous video platforms available to you.