

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

The importance of today's strong affirmation that the video marketplace has changed substantially since the inception of the leased access mandate cannot be overstated. Even in the last year since adoption of the FNPRM, the seismic shift in consumer behavior toward alternative services and away from traditional multichannel video programming distributors (MVPDs) has continued unabated, due in part to more alternative services coming online and also, of course, the global pandemic causing many consumers to adjust their viewing habits. There's no doubt, as confirmed by the record in this proceeding, that over-the-top video and virtual MVPDs compete directly with traditional MVPDs and have upended the market with regard to leased access, as it was contemplated in the 1992 Cable Act.

I have repeatedly called for updating the Commission's market definition, along with that of the Department of Justice, and it is welcome news to see such widespread agreement on this point. Nonetheless, for certain negative commenters, who agree that the market has changed substantially in the intervening years, the upheaval of the modern market still does not warrant a revision of the rules or eliminating them outright on First Amendment grounds. I, for one, however, do not see the point in rearranging the deck chairs simply for a better view of the iceberg. If we are going to proceed with addressing leased access, we have an obligation to embrace reality and our solemn oaths to defend the U.S. Constitution.

While there may be clear statutory limits in how far the Commission's authority extends with regard to answering the constitutional question, I had hoped for a more significant overhaul in this Order. That said, when leased access eventually does see its day in court, the item as adopted will certainly help to bolster the case in favor of striking these regulations down. I thank the Chairman for accepting my requested edits to strengthen certain language to emphasize our analysis of the current market and the Commission's determination that the market has changed significantly over the last three decades. As I noted, the record also bears this out, and my belief is that a reasonable court ought to determine this to be a strong argument in favor of finding a lack of sufficient interest to underpin the leased access requirements, which would in turn lead to their demise.

I approve.