

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART

Re: *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43.

Today, we take a step toward increasing the availability of video description to make television programming more accessible to those who are blind or visually impaired. This feature, made possible by many developments in video technology, has been found helpful or enjoyable by a number of visually impaired individuals, as well as their families and friends. Ultimately, I could potentially support some expansion of our requirements in this area, and I support this process to consider the merits of doing so and to give the public an opportunity to weigh in.

I appreciate the Chairman's willingness to flesh out some more specifics on the costs of this proposal. The cost-benefit analysis could be improved significantly, especially on the benefit side, and I hope to see updates and more data included if this initiative proceeds to the next stage.

For instance, the sparseness of the cost-benefit analysis makes it difficult to assess the value of the no-backsliding rule proposed. There must be some point at which a highly-ranked network can fall far enough in the ratings that the costs of compliance with these rules would clearly outweigh the benefits. I thank the Chairman for including an opportunity to comment about setting up an express exemption to address this concern.

At the same time, I share my colleague's disagreement regarding our statutory authority to expand the number of networks subject to these rules. Certainly, the proposal offered here would increase the total hour requirement for all networks well beyond the 75 percent increase specifically set as a maximum by the CVAA.¹ While the version of the bill that passed the House of Representatives included a specific grant of authority for the Commission to increase the availability of video-described programming, which according to the report included "an increase in the number of networks required to provide such programming or the number of hours required to be provided" ten years after

¹ 47 U.S.C. § 613(f)(4)(b).

enactment,² this concept failed to garner sufficient support, and was removed from the final version of the bill that was ultimately enacted into law. So it's implausible to think – and actually contrary to the canons of statutory construction – that we have authority to apply the rules to more networks now, *six* years after enactment, when language that would have allowed us to do the same thing *ten* years after enactment didn't even survive the legislative process. A final order following through on this specific proposal would be difficult for me to support, and, therefore, I must dissent in part.

² H.R. Rep. No. 111-563 (2010).