

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Applications of Charter Communications Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Doc. No. 15-149.

I fully support eliminating the harmful “overbuilding” mandate imposed on Charter Communications by the last Commission as part of the Charter/Time Warner Cable/Bright House Networks transaction. Although this item isn’t exactly what I would have written, it does the immediate job as requested by petitioners. Furthermore, it rightfully opens the door to the Commission scrutinizing other objectionable or questionable conditions in this transaction and others as well. I thank Chairman Pai and his team for bringing this item to a vote quickly and accommodating my requests to remove inappropriate verbiage and policy conclusions contained in earlier versions.

As I outlined in my partial dissent on the overall transaction last May, the overbuilding requirement represents extremely harmful public policy. To be clear, I have spent most of my career trying to remove barriers that may be preventing competition in communications markets. This highly repugnant overbuilding merger condition, however, is nothing of the sort. Instead, it functions as a misguided effort to install the government as Charter’s network deployment decision making team. Had it become effective, it would have forced existing and future Charter subscribers to pay higher rates for Charter’s expansion into markets that may have been economically unwise to enter, but were necessary in order for the company to meet the Commission’s dictate.

At the same, this policy would have harmed parties that were mere bystanders to the transaction. Specifically, Charter would have been forced to enter markets where the existing providers, including those represented by the petitioners, may not have been able to make the economic case for greater investments. These companies would have had to divert resources away from expanding their networks or improving overall quality of service to pay for additional marketing and advertising to avoid customer losses to Charter. In some cases, these would have been the very same markets in which the Commission is providing universal service high-cost support, because we determined that government subsidies were needed in order to be able to bring broadband to consumers. In other cases, the policy would have favored Charter cherry-picking the profitable portions of a market, leaving the rest to the existing provider with even more difficult economics and perhaps threatening its overall survival. Either way, private small companies would be harmed for the sake of somebody’s make-believe remedy to a nonexistent problem.

Beyond the likely negative impacts of the overbuilding requirement, the entire process used by the Commission in the original review did not comport with an acceptable mechanism to consider a merger transaction. While I plan to write separately on this point, I reject the notion prevalent in the original May item and hinted at in the remaining item today that there is some type of scale, and as long as there are enough “good” things that can be tossed aboard they can balance out any “bad” things. There is not.

Similarly, I strongly object to the notion that so-called “remedies” unrelated to the transaction itself or any supposed harms created by it, if any, can or should be permitted. To do so would turn the merger review process into a feeding frenzy. Surely, Congress did not expect the phrase “public interest, convenience and necessity” to turn into whatever unrelated commitments can be extorted from applicants.