

**Separate Statement of Commissioner Kathleen Q. Abernathy and
Commissioner Kevin J. Martin**

Re: The City of Pasadena, California, the City of Nashville, Tennessee, and the City of Virginia Beach, Virginia, Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues

We agree with today's Order that the Communications Act does not prohibit cable operators from itemizing and passing through to their cable television subscribers the full amount of franchise fees, even when those fees are based partially on revenues not related to the subscribers' services. We write separately to emphasize two points.

First, nothing in today's Order prevents local franchising authorities ("LFAs") and cable operators from reaching an agreement through contract to change how franchise fees are calculated or passed through. As the Order explains, "If LFAs and cable operators do not want to burden subscribers with higher franchise fee pass throughs, they may expressly omit certain items, such as advertising revenue and home shopping commissions, from the gross revenue definition." *Order* at ¶17.

Second, nothing in today's Order authorizes a cable operator to collect more money from subscribers as a franchise fee pass-through than the operator ultimately pays as a franchise fee to the LFAs. Thus, if a cable operator unintentionally over-collects from subscribers—due, for instance, to a mis-calculation or estimation of gross revenues—the cable operator must take some action to correct the discrepancy.

With the above two concerns addressed, we support today's Order.