

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART**

Re: Basic Service Tier Encryption, MB Docket No. 11-169

At long last, we provide cable operators with the freedom to encrypt their basic service tier offering. Encryption will allow cable operators to activate and deactivate cable service remotely to better serve their customers. This newly-allowed ability will also prevent theft of service while evening the regulatory playing field with satellite providers that have not been subject to this rule.

On the other hand, there are some aspects of this order that, as a matter of good government, should have been handled differently. First, the Commission could have decided this matter more expeditiously. Needless delay of the relief we provide today has frustrated the private sector's ability to meet consumer demand. Going forward, it is my hope that the Commission will work with greater alacrity when pursuing the noble goal of providing greater flexibility to the private sector.

Second, in light of the flexibility we grant today, the six largest cable providers have committed to ensure basic service tier access to third-party IP-enabled devices. These commitments are preconditions to encryption for these entities. I am pleased that these IP-enabled device protections will sunset in three years; however, the Commission today also delegates to the Media Bureau authority to extend these protections should the bureau decide they are necessary to protect consumers. I would prefer that the Commission, rather than the bureau, make this call. I am concerned that delegating this authority to the bureau may invite further unnecessary delay.

Additionally, an ordering clause states that, if any of the Order's rule changes are invalidated, the remaining provisions will not be effective. I have concerns regarding the possible inconvenience and confusion that would be experienced by both consumers and cable operators if any portion of this order happens to be overturned by a court after cable operators have taken the necessary steps to encrypt service.

Despite these concerns and others, I vote to approve in part and concur in part to today's order. Furthermore, I thank the Chairman, my colleagues and our fine team in the Media Bureau for their conscientious work on this matter.