Appendix C

Table C-1
Assessment of Competing Technologies (i)

Technology Used	Dec. 1994	Dec. 1995	Dec. 1996	Jun. 1997	Jun. 1998
(1) TV Households(ii)	95,400,000	95,900,000	97,000,000	97,000,000	98,000,000
Pct. Change	1.27%	0.52%	1.15%	0.00%	1.03%
(2) MVPD Households(iii)	63,936,620	68,487,750	72,370,950	73,646,970	76,634,200
Pct. Change	6.06%	7.12%	5.67%	1.76%	4.06%
Pct. of Households	*67.02%*	*71.42%*	*74.61%*	*75.92%*	*78.20%*
(3) Cable Subs.	59,700,000	62,100,000	63,500,000	64,150,000	65,400,000
Per Cent Change	4.37%	4.02%	2.25%	1.02%	1.95%
Pct. of MVPD Total	*93.37%*	*93.37%*	*87.74%*	*87.10%*	*85.34%*
(4) MMDS Subs.	600,000	851,000	1,180,000	1,100,000	1,000,000
Pct. Change	51.13%	41.83%	38.66%	-6.78%	-9.09%
Pct. of MVPD Total	*0.94%*	*1.24%*	*1.24%*	*1.49%*	*1.30%*
(5) SMATV Subs.	850,000	962,000	1,126,000	1,162,500	940,000
Pct. Change	-15.34%	13.18%	17.05%	3.24%	-19.14%
Pct. of MVPD Total	*1.33%*	*1.40%*	*1.56%*	*1.58%*	*1.23%*
(6) HSD Subs.	2,178,000	2,365,400	2,277,760	2,184,470	2,028,200
Pct. Change	35.11%	8.60%	-3.71%	-4.10%	-7.15%
Pct. of MVPD Total	*3.41%*	*3.45%*	*3.15%*	*2.97%*	*2.65%*
(7) DBS Subs.	602,000	2,200,000	4,285,000	5,047,000	7,200,000
Pct. Change	760.00%	265.45%	94.77%	17.78%	42.66%
Pct. of MVPD Total	*0.94%*	*3.21%*	*5.92%*	*6.85%*	*9.40%*
(8) OVS Subs.			2,190	3,000	66,000
Pct. Change				36.99%	2,100%
Pct. of MVPD Total			*0.0%*	*0.0%*	*0.09%*
(9) VDT Subs. (Trials) (iv)	6,620	9,350	0	0	0
Pct. Change		*41.24%*	-100.00%	0.00%	0.00%
Pct. of MVPD Total	*0.01%*	*0.01%*	*0.00%*	*0.00%*	*0.00%*

In sum, because the Report slices the relevant product market too thin and thereby paints many actual competitors out of the picture, its conclusions about the state of competition are skewed *ab initio*. I thus cannot endorse those conclusions.

III.

The objective facts in the Report -- which, as opposed to the conclusions about competition, I have no quarrel with -- indicate that even in the multichannel-only product market cable today faces a significant amount of competition and that this competition is likely to grow.

The percentage of MVPD subscribers that purchase cable (85%) is not, in itself, cause for concern. This market share statistic provides no direct evidence of the availability, or lack thereof, of alternatives to cable, although it is often cited as such. On its face, it only tells us that many people have opted -- perhaps for reasons entirely apart from lack of choice -- for cable companies over other video distributors. The reasons that consumers choose certain video products over others are complicated, based on personal cost-benefit determinations, and cannot be adduced from this number.

In short, it simply does not follow from the fact that cable has a preponderance of MVPD customers that cable has an unlawful or inefficient hold on the market. The FCC should not be in the business of trying to drive down the percentage of MVPD subscribers who take cable. Instead, we should create an environment that allows alternative providers to meet market demand for these services by removing regulatory impediments like rate regulation.

The fact that cable price increases outpaced the general rate of inflation is not necessarily cause for concern either. The inflation rate measures the *average* increase in prices of consumer goods and services. Producers of goods and services in various industries of course face widely divergent circumstances in terms of production, labor, overhead costs, *etc.;* simply put, not all industries face average costs. Given that cable has invested heavily in systems upgrades, *see supra* at para. 9 (increase of 21% since 1996), that its programming and licensing costs have increased far faster than inflation, *see id.* (increase of 18.4% and 20.9%, respectively), and that cable is providing more video and non-video services to its customers than ever before, *see id.*, a 7.3% price increase, as compared to a national average of 1.7%, is not particularly strong evidence of anticompetitive behavior.

Cable subscribership increased last year. I believe that consumers are not irrational. If they felt that cable, at the price it was offered, did not provide a service that they believed was worth the cost, they would not pay for it. They would migrate to other sources of video programming -- including, most obviously, free over-the-air broadcast programming. But cable subscribership *grew* by almost 2 million since the end of 1996. *See id.* at para. 17; App. B, Table B-1.

This evidence casts substantial doubt upon the notion that cable is somehow "overpriced," given the presence of choices for other video programming services. Either the consumers who subscribed to cable last year did not know of the availability of these services at lower prices in 1996, or the value they placed on the increased quality in cable service outweighed the intervening price increases. I find the latter more plausible.

DBS is making dramatic gains, presenting mounting competition to cable. The Report blinks reality in suggesting that DBS is not having a real competitive effect in the multichannel video

(7) DBS subscribers: 1994 from Kent Gibbons, *DBS: We're Walking the Walk*, Multichannel News, Jan. 16, 1995, at 3, 52; 1995 from *DTH Subscribers*, SkyREPORT, Jan. 1997, at 8; 1996-1997 from *DTH Subscribers*, SkyREPORT, Nov. 1997, at 10; and 1998 from Minal J. Damani and Jennifer E. Sharpe, *U.S. DBS Marketplace: 1998*, The Strategis Group, Jul. 1998, at 6.

(8) OVS subscribers: 1996 from Bell Atlantic Comments at 5. The 1997 and 1998 subscribers were estimated by the FCC.

(9) VDT trial subscribers: 1994-95 from Section 214 Applications, ex parte letters and associated filings with the FCC.

Dissenting Statement of Commissioner Harold Furchtgott-Roth
Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102

For the reasons that follow, I must respectfully dissent from the 1998 "Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming."

I.

As an initial matter, I do not believe that the issuance of this Competition Report fulfills our duties under the Communications Act. Instead of examining the state of competition "in the market for the delivery of video programming," 47 USC section 628(g), as the statute prescribes, the Report artificially limits its analysis to the delivery of "*multichannel* video programming."[1] There are, of course, many forms of video programming that do not come bundled in channels but that are still part of the general video distribution market. Unfortunately, the Report does not take full account of these very real forces in its investigation of competition.

For instance, the report considers broadcast service only as a competitor to multichannel video programming distributors ("MVPDs") in advertising, programming acquisition, and programming production, *see supra* at paras. 95-101, but not as an independent delivery source of video programming. Yet the statutory definition of "video programming" specifically *includes* broadcast programming. *See* 47 USC section 602(20) (providing that "the term 'video programming' means programming provided by, or generally comparable to programming provided by, a television broadcast station"). In focusing primarily on what is a *submarket* of video programming -- the "multichannel" distribution market -- rather than the entire market, the report does not fully meet the requirements of the statute.

The language of the statute also makes clear that Congress considered the delivery of video programming to constitute a single "market," *see id.* section 628(g) (referring to "the market" for video programming delivery), not a conglomeration of "markets," as the very title of this Report suggests in speaking of "[m]arkets" for the delivery of video programming. We should, as a plain statutory matter, have considered the delivery of video programming a single market in this Report.

II.

In addition to the above-described statutory reasons to view the relevant market participants as more than just MVPDs, economic theory supports that conclusion.

A product market is not comprised of perfectly substitutable products. *Cf. supra* at para. 63 (discussing whether DBS "represents a substitute" for cable). Rather, "[a] product market is a group of goods or services whose availability and prices *discipline* one another." Crandall & Furchtgott-Roth, *Cable TV: Regulation or Competition?* at 26 (1996) (emphasis added). For its part, cable television

[1] It is true that the general "purpose" provision of section 628 refers to "increasing competition and diversity in the multichannel video programming market." 47 USC section 628(a). That (hortatory) provision, however, is not the section pursuant to which we issue this Report. Section 628(g), the section specifically requiring this Report, contains the more directly relevant and thus trumping language.

TABLE C-3
1998 MVPD Horizontal Concentration Nationwide[1]

Rank	Company	Per Cent of Subscribers[2]
1	TCI	26.48
2	Time Warner	16.04
3	MediaOne	6.32
4	Comcast	5.79
Top 4		*54.63*
5	DirecTV	4.60
6	Cox	4.24
7	Adelphia	2.60
8	Century	1.72
9	Charter	1.62
10	Marcus	1.62
Top 10		*71.04*
Top 25		*80.99*
Top 50		*86.08*
	HHI	**1096[3]**

[1]MSO subscriber totals as of May 1998, and reported in *Top 100 Cable System Operators as of May1998*, Cable TV Investor, (Sept. 11, 1998), pp. 7-8. There is no double counting of subscribers. If a cable operator or DBS provider is partially owned by more than one MSO, it is assigned to the largest MSO. Subscribers for DirecTV and Primestar based on *DTH Subscribers* (Chart), SkyREPORT, April 1998, at 2.

[2]The total number of MVPD subscribers used to calculate the HHI is 73,634,200 from Table C-1. Differences in totals reflect rounding.

[3]The HHI is calculated on the basis of market shares for the top 50 companies. Because all of the remaining MVPDs have very small shares of the market, an HHI calculation that included all cable system operators could only be slightly higher (no more than 2-3 points) than the given HHI.

STATEMENT OF COMMISSIONER GLORIA TRISTANI

In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102

Debates about the status of cable competition often seem a rote exercise. One side asserts that competition has arrived and that market forces now can be relied upon to protect consumers; the other side claims that cable's dominant market power remains intact. One side argues that DBS has emerged as a substitutable, if not superior, video product to cable; the other side dismisses DBS as a high-end option. One side states that consumers are receiving more value (i.e., more and better programming services) for their money; the other side stresses the fact that rates continue to rise at more than four times the rate of inflation.

If few minds are ever changed during these debates, it may be because both sides are partly right. They are just focused on different consumers. Those who assert that competition has arrived are focused on a particular category of video consumers: those who want and can afford large programming packages. The cable industry has invested billions of dollars in capacity upgrades -- and plans to invest billions more -- in order to keep these consumers from defecting to DBS and, more importantly, to be able to exploit new revenue opportunitites like high-speed Internet access. As it happens, both reasons underlying cable's expanding capacity (i.e., increased channels and new services) are aimed at similar consumers, who tend to be younger and more well-off than the nation as a whole.[1] Although the cost of upgrades and new services may have caused rates to climb four times faster than the rate of inflation, these consumers may very well feel that the higher prices are justified by the increased value of the delivered product.

These consumers can look forward to even better times ahead. On the video side, if the up front costs of DBS continue to decline (and especially if DBS providers are able to provide local broadcast signals), an increasing number of consumers of large programming packages will find DBS and cable to be complete substitutes for each other.[2] On the data side, several entities, including telephone companies and wireless operators, are moving to enter the high-speed data business. It thus appears that these consumers can expect to have multiple service providers competing to serve both their video and data needs.

But there is another group of consumers who are not doing so well. These consumers do not want, cannot use or cannot afford large programming packages or high-speed data services. They are

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[1]*See Yankee Group Presentation -- Satellite TV: Research Overview*, April 15, 1998 (stating that average new DBS household income is 51% greater than average household, and that average new DBS subscriber is 50% more likely than average to be between age 18 and 34); *Falling Through The Net II: New Data on the Digital Divide*, NTIA Study July 1998 (finding that 49.2% of U.S. households with income above $75,000 had an online service, compared to only 9% of U.S. households with income between $20,000-24,999, and that only 8.8% of households over 55 years old had an online service, compared to 18.6% of the population as a whole).

[2]The major exception remains the 28% of American households in multiple dwelling unit buildings. Although the Commission has interpreted Section 207 of the 1996 Telecommunications Act to the limit of our stautory authority, an MDU resident can still be denied the right to install and use a DBS dish unless he or she has a balcony or other outdoor exclusive use area on which a dish can be placed and that faces the right direction to "see" the satellite.

YEAR	BUYER	SELLER	SYSTEMS	PRICE** (Mil.)	SUBS (Actual)	PRICE/ SUB***	CASH FLOW MULT
Sept-97	Time Warner*	TCI*	NY	$80	62,000	$1,290	6.2
Sept-97 (c)	KC Cable	TCI	Overland KS	$258	93,000	$2,777	12.3
Sept-97	TCI*	Time Warner*	PA, WY, MO	$80	55,000	$1,455	8.1
Sept-97	TCI*	Time Warner*	Portland OR	$270	126,000	$2,143	10.2
Sept-97	TCI*	Time Warner*	TX	$203	117,000	$1,735	8.7
Sept-97	Time Warner*	TCI*	TX	$203	126,000	$1,607	8.2
Sept-97	TCI/TW JV	TCI	TX	$1,326	520,000	$2,550	9.1
Sept-97	TCI/TW JV	TW	TX	$1,176	510,000	$2,306	12.5
Sept-97	Prime Cable	SBC Corp	VA, MD	$637	268,000	$2,377	8.2
Oct-97	Helicon Corp	Booth Comm	Anderson SC	$31	16,000	$1,934	9.6
Oct-97	Harron Comm	Auburn Cable	Auburn NY	$28	14,000	$1,958	10.2
Oct-97	Helicon Corp	Booth Comm	Boone NC	$35	19,000	$1,852	9.5
Oct-97	Comcast	Jones Fund 14	Broward FL	$140	55,000	$2,545	10.3
Oct-97	Helicon Corp	Calhoun TV	Calhoun TN	$1	1,000	$1,285	6.6
Oct-97	Optel	Phonoscope	Houston TX	$37	34,000	$1,074	8.8
Oct-97	TWE/AN	Time Warner	NY, FL, NC	$1,327	640,000	$2,073	9.4
Nov-97	CableOne*	Time Warner*	Anniston AL	$65	36,000	$1,814	9.5
Nov-97	Avalon Ptrs	Pegasus	CT, NH	$30	15,000	$1,954	9.0
Nov-97	Renaissance	Time Warner	Jackson , TN	$291	125,000	$2,328	9.8
Nov-97	Marcus Cable	McDonald Inv	Mountain Brook, AL	$62	23,000	$2,680	9.8
Nov-97	Fanch Comm	Spring Green	Spring Green , WI	$10	9,000	$1,051	7.3
Nov-97	CableOne	Jones Fund 14	Surfside SC	$52	25,000	$2,060	10.3
Dec-97 (c)	TCI*	Insight Comm*	Brigham UT	$125	58,000	$2,160	9.2
Dec-97 (c)	Insight Comm*	TCI*	Evansville IN	$131	63,000	$2,098	9.7
Dec-97	TCI*	MediaOne*	Chicago IL	$1,284	542,000	$2,368	10.6
Dec-97	Comcast	Marcus Cable	DE, MD	$66	27,000	$2,472	9.9
Dec-97	TCI*	Century Comm*	Fairfield CA	$191	90,000	$2,121	9.7

Overall, I believe that the factual story this report tells is a positive one. The report indicates that there are promising trends in the video programming industry. Despite some entry barriers, we continue to see forays by telephone companies and other utilities, satellite companies and wireless providers into this market. Investment in this arena is strong. I believe this is so not just because the video business is a good one, but also because of the promise of the coming broadband market. Broadband offers the potential for new revenue streams for MVPD providers and, in turn, will provide consumers with new products and new choices. We should be careful not to take actions that would threaten further growth.

YEAR	BUYER	SELLER	SYSTEMS	PRICE** (Mil.)	SUBS (Actual)	PRICE/ SUB ***	CASH FLOW MULT
Mar-98	Classic Comm	CableOne	TX, OK, KS, MO	$44	29,000	$1,523	8.3
Mar-98	Frontiervision	N.Oakland	Sumpter MI	$14	8,000	$1,743	7.7
Mar-98	Frontiervision	TCI	Port Clinton OH	$10	7,000	$1,429	6.6
Mar-98	CND Acquisition	King Kable	Andrews NC	$2	2,000	$750	6.9
Mar-98	Upsala Coop.	Midcontinent	Grey Eagle MN	$.5	500	$1,000	8.1
Mar-98	Galaxy Cablevision	USA Cablevision	Brooks/Colquitt Cts. GA	$.1	500	$313	2.8
Apr-98	Vulcan Ventures	Marcus	TX	$2,775	1,100,000	$2,523	11.1
Apr-98	Jones Intercable	Jones	Palmdale CA	$138	64,000	$2,176	10.4
Apr-98 (c)	Time Warner*	Cablevision*	Rensselaer NY	$57	30,000	$1,944	9.2
Apr-98 (c)	Cablevision*	Time Warner*	Litchfield CT	$49	27,000	$1,835	9.2
Apr-98	CableOne	Bresnan Comm	Grenada MS	$11	7,000	$1,564	7.3
Apr-98	Jones InterCable	Jones	Littlerock CA	$11	6,000	$1,881	8.8
Apr-98	TCI	Jones Fund	Chicago IL	$597	255,000	$2,340	9.8
Apr-98	TCI/Cox JV	TCI	Tulsa OK	$285	150,000	$1,902	8.2
Apr-98	TCI/Cox JV	Cox Comm.	Oklahoma City OK	$285	120,000	$2,378	11.6
Apr-98	Triax	Marcus Cable	Ottawa IL	$66	33,000	$2,018	9.0
Apr-98	Vista Comm	Smyrna Cable TV	Smyrna GA	$62	27,000	$2,351	9.2
Apr-98	TW Fanch	TCI	MD, OH, VA, WV	$274	148,000	$1,858	9.2
May-98	Cox Comm	Community Cable	Las Vegas NV	$1,137	319,000	$3,564	13.0
May-98	Millennium	InterMedia Partners	Arundel MD	$130	54,000	$2,399	9.3
May-98	Amer Cable Ent	Booth American	Victorville CA	$74	32,000	$2,300	9.3
May-98	N. Willamette	Northland Comm	Woodburn OR	$7	4,000	$1,605	6.5
May-98	Cox Comm	TW-Douglas Cable	Omaha NE	$6	5,000	$1,224	7.9
May-98	Jones	Bresnan	GA	$50	24,000	$2,114	8.8
Jun-98	Savage Comm.	Midcontinent	East Gull Lake MN	$1.1	1,000	$1,100	8.7

SEPARATE STATEMENT OF COMMISSIONER MICHAEL POWELL

Re: *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102*

Today we transmit the Fifth Annual Report of the FCC to Congress regarding the state of competition in video programming. I wish to offer my view on how to interpret some of the most noteworthy facts contained within this report.

First, a word about concentration in the multi-channel video market. I take issue with some of the analysis in this report designed to quantify the extent of concentration in this market. I am not convinced that the product markets are properly defined and I question the value of hypothetical concentration analysis to produce an HHI index. But it really does not matter. By any measure, cable commands the lion's share of the multi-channel video market, though that share continues to steadily decline. Indeed, having started from a position of near total monopoly, it would be surprising if it did not control a large market share only three years since the passage of the 1996 Act. What must be understood is that market share alone does not support the conclusion that a given cable operator is exercising market power to the detriment of consumers.

As antitrust scholars well know, monopoly (or near monopoly) is not per se illegal, nor does the presence of a monopolist necessarily mean that there are anti-competitive effects flowing from its dominant position. A multitude of competitive alternatives certainly is always preferred, but the existence of only a few is not sufficient to pronounce anti-competitive harms to consumers. What must be examined is (1) the ability of the monopolist to raise prices substantially in excess of marginal costs, (2) whether a monopolist can restrict output, and (3) whether the lack of competition results in a lack of innovation. When one examines the state of the cable industry, I do not believe one can fairly conclude that consumers are suffering from cable's dominant position.

Price Increases: Many of cable's critics quickly point to the increases in cable prices as evidence that there is a lack of competition. Perhaps, but one cannot proclaim that prices are increasing faster than the consumer price index and rest the case. Price increases, of course, are not anti-competitive unless they substantially exceed the private firm's costs. If price increases are largely a consequence of increases in cost, it is incorrect to cite price increases as evidence of competitive harm. In the case of video programming, it is indisputable that programming licensing fees MSO's must pay have increased dramatically (18.4% last year) as have programming costs (20.9% last year). This report squarely acknowledges these facts. Moreover, it is not monopolistic behavior to increase prices to upgrade infrastructure and facilities that will ultimately benefit consumers in the market. In this report, we find that capital expenditures to upgrade cable facilities were up 21% last year. It is particularly dubious to cite price increases to demonstrate lack of competitive discipline when prices have been regulated.

Undoubtedly, in areas where there is direct competition to cable, the prices have been lower than non-competitive systems, but not by that much. In 1997, the price difference between competitive and non-competitive systems was $1.57, down from $1.69 the previous year. In short, most competitors are entering the market at similar price points.

NOTES:

* System swaps.
** The transaction prices are from Paul Kagan Assocs. The transaction price is dependent upon the terms of each transaction and may or may not include debt.
*** The calculations of Price/Basic Subscriber are from Paul Kagan Assocs. These calculations are subject to rounding and reporting inconsistencies.
(c) Indicates a "consummated transaction."

SOURCES:

Paul Kagan Associates, Inc., *Announced/Proposed Cable System Sales*, Cable TV Investor, Jul. 9, 1997, at 10; Aug. 22, 1997, at 8; Sept. 10, 1997, at 4; Oct. 9, 1997, at 14; Nov. 21, 1997, at 9; Dec. 29, 1997, at 11; Jan. 30, 1998, at 8; Feb. 24, 1998, at 8; Mar. 13, 1998, at 10; Apr. 14, 1998, at 11; May 26, 1998, at 5; Jun. 30, 1998, at 7; Aug. 10, 1998, at 10; Sept. 11, 1998, at 5. Communications Daily, Mass Media ,Nov. 2, 1998; Communications Daily, Mass Media .Nov. 3, 1998; TCI Press Releases: *TCIC and TCA Finalize Partnership*, Feb. 2, 1998, available at http://www.tci.com/tci.com/press/980202.html; *TCIC Completes Transaction with Multimedia to Exchange Cable Systems in Illinois, Indiana and Kansas*, Aug. 31, 1998, available at http://www.tci.com/tci.com/press/980831.html; *TCIC Completes Contribution of Overland Park, Kansas Cable System to TCIC/Time Warner Partnership*, Aug. 31, 1998, available at http://www.tci.com/tci.com/press/980831a.html.

Separate Statement
of
Commissioner Ness

Re: In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Program

This, our fifth annual report on the status of competition in the market for the delivery of video programming, finds that competition to cable is slowly but steadily growing. The record evidences a consistent trend showing that more people each year perceive that they have more than one multichannel video provider ("MVPD") from which to choose.

As is often the case, readers can interpret the data in this comprehensive report in various ways. In my view, the data tell a positive story about the development of multichannel video competition, particularly from Direct Broadcast Satellite service ("DBS"). From July 1994 to June 1998, DBS subscribership has grown from 70,000 to 7.2 million, which, as of June 1998 represented 9.4% of all MVPD subscribers. In each of the last four years, DBS has experienced impressive growth. Indeed, Paul Kagan reports that 2.2 million of the 3.6 million net new MVPD subscribers in 1998 (or almost two-thirds) are choosing DBS.

Last year, our report identified at least three reasons why potential DBS subscribers declined to sign up: high installation costs, significant costs to hook up additional TV sets, and the lack of broadcast television service. Since last year, the cost of installation has plummeted, although it remains expensive to hook up additional sets. Notably, efforts have been made in the last year to address the legislative and technological prerequisites to enable DBS providers to offer local broadcast signals in their respective local markets. Whether it is 'local into local' or consumer education and assistance with installation of rooftop antennas, the key is cooperation between terrestrial broadcasters and DBS providers. Success on this front could make DBS an even better substitute to cable for many Americans.

The level of competition in the multichannel video market should not be measured solely by whether cable continues to lose market share. If cable operators use competitive responses to retain customers, so much the better. We should not fault the cable industry for beefing up its service quality, for example, in light of growing competition. Some of the data in this report show that the "pie" is getting slightly larger, as the number of total TV households grows and the numbers of multichannel video subscribers grows. For example, the total number of television homes increased from 97 million in 1996 to 98 million today. The total number of households subscribing to MVPDs increased 4.1% from 73.6 million in 1997 to 76.6 million in 1998. The number of cable subscribers also continued to grow, rising about 2% from 64.2 million in 1997 to 65.4 million in 1998. Some subscribers have chosen to retain basic cable for local service while adding DBS for its national programming and picture clarity. Thus, both the number of cable subscribers and non-cable subscribers have grown and may continue to grow.

While I am heartened by the progress made in the development of new competition to cable, some concerns remain. Local cable franchise areas served by a wireline competitor, while growing, are limited. The widespread entry by local exchange carriers (LECs) envisioned by the Congress has not yet developed. Not everyone has access to DBS (it is currently available only throughout the Continental United States), and even with our extension, last fall, of the over-the-air reception device accessibility

Appendix D

Table D-1
MSO Ownership in National Video Programming Services

Programming Service	Launch Date	MSO Ownership (%)
Action Pay-Per-View	Sept-90	TCI (35)
AMC (American Movie Classics)	Oct-84	Cablevision (75)
Animal Planet	Oct-96	TCI (49), Cox (24.6)
BBC America	Mar-98	TCI (24.6), Cox (12.3)
BET (Black Entertainment Television)	Jan-80	TCI (35)
BET on Jazz	Jan-96	TCI (35)
BET Movies	Feb-97	TCI (81)
The Box Worldwide	Dec-85	TCI (78)
Bravo	Feb-80	Cablevision (75)
Canales ñ (1) (Digital package of 8 video channels)	Aug-98	TCI (100)
Cartoon Network	Oct-92	Time Warner (100)
CBS Eye on People	Mar-97	TCI (24.6), Cox (12.3)
Cinemax	Aug-80	Time Warner (100)
CNN	Jun-80	Time Warner (100)
CNNfn (The Financial Network)	Dec-95	Time Warner (100)
CNN Headline News	Jan-82	Time Warner (100)
CNN International	Jan-95	Time Warner (100)
CNN/SI	Dec-96	Time Warner (100)
Comedy Central	Apr-91	Time Warner (50)
Court TV	Jul-91	TCI (50), Time Warner (50)

Statement of Chairman William Kennard

Re: In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket 98-102

When Congress passed the Telecommunications Act of 1996, it affirmed the principle that when it comes to innovation and consumer choice, competition is preferable to regulation. Congress envisioned that the removal of market entry barriers would produce robust competition offering a wide array of viewing choices at reasonable prices to millions of American families across the nation. Our annual report shows that, although competition is increasing, the level of competition that consumers are seeking has not yet arrived.

Eighty-five percent of all households subscribing to multi-channel video service receive that service from their local cable operator (a two percent decline from the 87 percent we reported a year ago). With this high market share, it is not surprising that cable prices rose more than four times the rate of inflation between June 1997 and June 1998.

The drop in local cable operators' dominance of this market is primarily due to the continued growth of DBS systems, and to a lesser degree, the launch of new open video systems and instances where incumbent cable operators have faced head-to-head competition from other cable operators. These cases are immensely important for they teach us an important lesson. That lesson is that competition brings consumer benefits. And, as we continue to move towards a more competitive market, it is my hope that consumers will benefit from lower prices, improved customer service, and additional services.

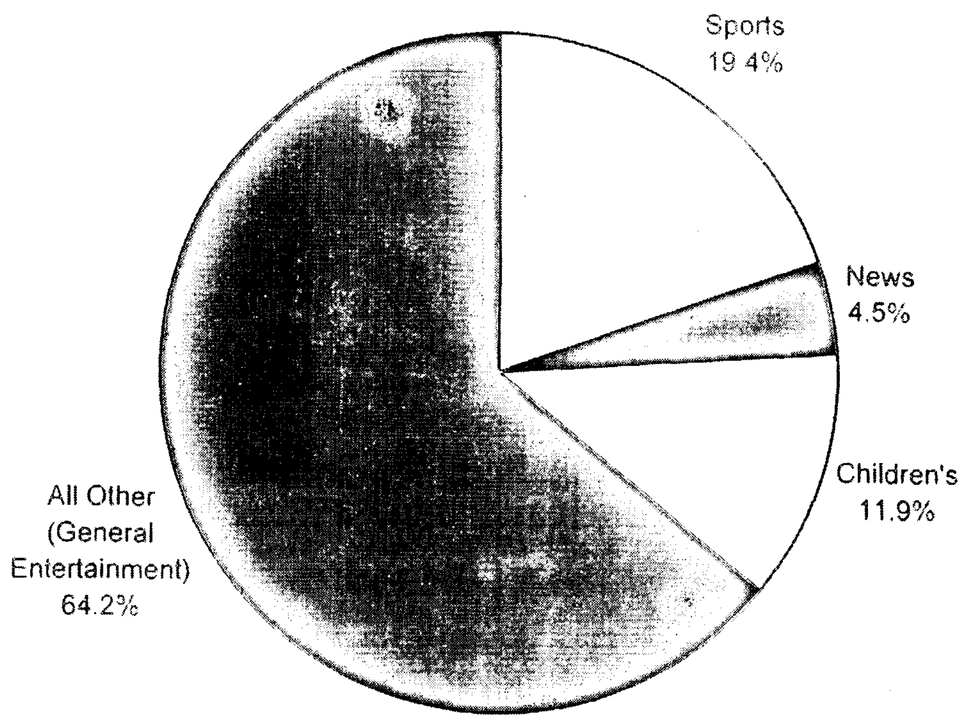
Over the past year, the Commission has taken a number of steps to foster vigorous competition in this field. We improved our program access rules. We pre-empted rules and regulations that prohibited renters and residents in multiple-dwelling units from setting up satellite dishes and antennae in areas under their exclusive control. We ensured that consumers soon will be able to choose to purchase set top boxes from their local retailer instead of leasing their boxes from their cable operator. And we sought updated information on the state of horizontal concentration in the cable industry and how it affects competitiveness.

The Commission will continue to take aggressive actions to promote competition. I believe that we could do even more if we were given additional statutory tools. Congress has done much to promote competition in this marketplace, and I believe it would be beneficial for Congress to consider taking additional actions to promote competition. Specifically, I believe that Congress should continue to consider whether to amend the Satellite Home Viewer Act to allow DBS providers to carry local broadcast signals. In my view, it is difficult for DBS to develop as a head-to-head competitor to cable if DBS can't carry many of the channels at the heart of our TV experience. In other words, it's more than a little frustrating to be able to watch a football game a 1,000 miles away, but not be able to tune in to your local news to see if it is going to rain tomorrow. Many consumers have reported this type of frustration with DBS. I believe that removing this prohibition would help promote the further growth of DBS.

I would like to work with Congress as they evaluate other statutory proposals to promote competition. For example, the Commission's current impact on competition in MDUs is limited because our authority to allow use of the inside wiring by competitors extends only to circumstances where the incumbent video service provider no longer has a legal right to remain in the building. And, as I said only a month ago when we adopted new OTARD rules, I would like to open a dialogue with Congress regarding the possible extension of the OTARD provisions for renters and others who do not have

Programming Service	Launch Date	MSO Ownership (%)
HBO (Home Box Office)	Nov-72	Time Warner (100)
HBO 2	Dec-75	Time Warner (100)
HBO 3	Oct-93	Time Warner (100)
HBO Family	Dec-96	Time Warner (100)
Home Shopping Network	Jul-85	TCI (18.6), MediaOne (<1)
Home Shopping (Spree!)	Sep-86	TCI (18.6), MediaOne (<1)
Independent Film Channel	Sep-94	Cablevision (75)
International Channel	Jul-90	TCI (90)
Kaleidoscope	Sep-90	TCI (12)
Knowledge TV (formerly Mind Extension University)	Nov-87	Jones (97)
MoreMAX (formerly Cinemax2)	Aug-91	Time Warner (100)
MuchMusic USA	Jul-94	Cablevision (75)
Odyssey Channel	Oct-93	TCI (32.5)
Outdoor Life Network	Jul-95	Cox (33.3), TCI (16.7), Comcast (8.3), MediaOne (8.3)
Ovation: The Arts Network	Apr-96	Time Warner (4.2)
Prevue Channel	Jan-88	TCI (44)
PIN (Product Information Network)	Apr-94	Cox (45)
QVC	Nov-86	Comcast (57), TCI (43)
Romance Classics	Jan-97	Cablevision (75)
Sci-Fi Channel	Sept-92	TCI (18.6), MediaOne (<1)
Sneak Prevue	May-91	TCI (12)
Speedvision	Dec-95	Cox (33.3), TCI (16.7), Comcast (8.3), MediaOne (8.3)

Chart F3:
Breakdown of Licensing Fee Increases by Type of Programming
For Four MSOs for the Year Ending July 1, 1997



website http://www.tci.com/libertymedia.com/liberty.pgs/libertyfinancial.html on Aug. 21, 1998. Eben Shapiro and John Lippman, *Murdoch Sells TV Guide to an Affiliate of TCI,* Wall Street Journal, Jun. 12, 1998, at B1. Time Warner, Inc., 1997 Annual Report. Donaldson, Lufkin & Jenrette, Equity and Research: Broadcasting and Cable, Table 15: U S West Media Group · Valuation of Non-Consolidated/Non-Domestic Cable Investors, March 10, 1998, at 35. U S West, Inc., Form 10-K/A for the fiscal year ended Dec. 31, 1997. Comcast Corp., Form 10-K for the fiscal year ended Dec. 31, 1997. *Comcast Content*, at http://www.comcast.com/content/qvc.htm on Aug. 21, 1998. *Comcast Other Investments*, at http://www.comcast.com/other/index.htm on Aug. 21, 1998. *Cox Strategic Investments*, at http://www.cox.com/financials/investments.html on Aug. 21, 1998. Cablevisions System Corp., Form 10-K for the fiscal year ended Dec. 31, 1997. Adelphia Communications Corp.. Form 10-K/A for the fiscal year ended Dec. 31, 1997. Jones Growth Partners II, L.P., Form 10-K for the fiscal year ended Dec. 31, 1997.

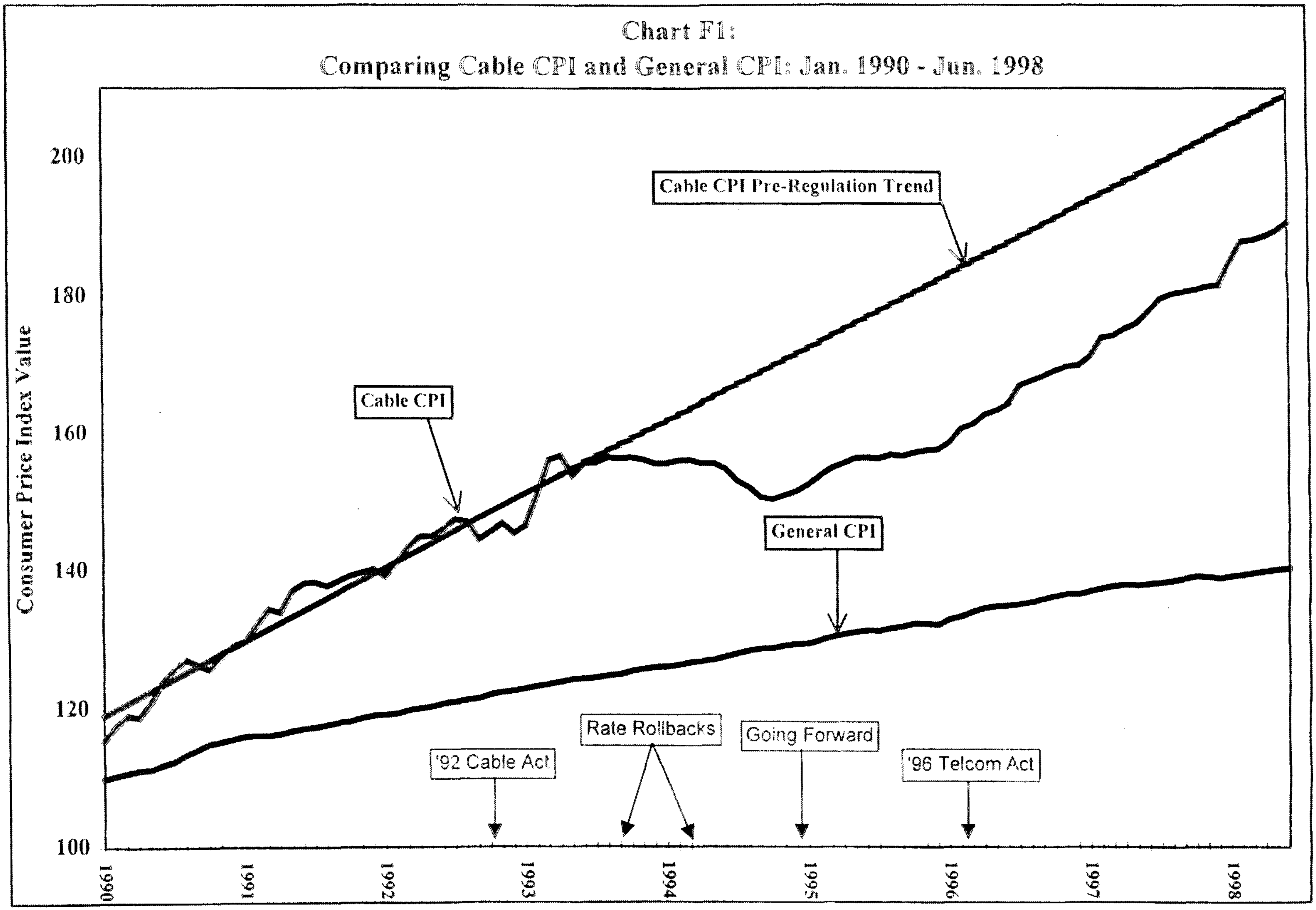


Chart F1:
Comparing Cable CPI and General CPI: Jan. 1990 - Jun. 1998
Consumer Price Index Value
200
180
160
140
120
100
Cable CPI Pre-Regulation Trend
Cable CPI
General CPI
Rate Rollbacks
Going Forward
'92 Cable Act
'96 Telcom Act
1990
1991
1992
1993
1994
1995
1996
1997
1998

Programming Service	Launch Date
CMT (Country Music Television)	Mar-83
CNBC	Apr-89
Consumer Resource Network	Dec-94
Crime Channel	Jul-93
Deep Dish TV	Jan-86
Disney Channel	Apr-83
Do-it-Yourself	Jan-98
Dream TV Network	Nov-96
Ecology Channel	Nov-94
Employment Channel	Feb-92
The Erotic Network (TEN)	Aug-98
ESPN	Sep-79
ESPN2	Oct-93
ESPN Classic Sports (formerly Classic Sports Network)	May-95
ESPNEWS	Nov-96
Ethnic-American Broadcasting Co.	1992
EWTN: Global Catholic Network	Aug-81
Fashion Network	Jul-96
Filipino Channel	Apr-91
Flix	Aug-92
Fox Family Channel (formerly The Family Channel)	Apr-77
Foxnet	Jul-91
Fox News Channel	Oct-96
FXM: Movies from Fox	Oct-94
Galavision	Oct-79
Game Show Network	Dec-94
Gay Entertainment Television	Nov 95

Table F1

PROGRAMMING COST INQUIRY: SUMMARY OF RESULTS REVENUES AND PROGRAMMING EXPENDITURES FOR REGULATED SERVICES Based on Averages of Four Large MSOs*	1996 ($ in millions)	1997 ($ in millions)	Percent Change
Revenues:			
Average Regulated Revenue	**$1,774.5**	**$2,022.8**	**14.0%**
Average Advertising Revenue	$130.6	$168.4	28.9%
Average Sales Commissions	$18.2	$19.8	8.8%
Average Advertising Revenue as a Percent of Average Regulated Revenue	7.4%	8.3%	
Average Commissions as a Percent of Average Regulated Revenue	1.1%	1.0%	
Programming Expenditures:			
Average Programming Expenditures for All Regulated Services	**$397.8**	**$478.1**	**20.2%**
Average Expnditure for Each Subcategory of Programming:			
Sports	$109.7	$127.6	16.3%
News	$42.4	$53.3	25.8%
Children's	$44.2	$55.1	24.6%
"All Other"	$201.9	$242.1	19.9%
Each Subcategory of Programming as a Percentage of Programming Expenditures			
Sports	27.6%	26.7%	
News	10.7%	11.2%	
Children's	11.1%	11.5%	
"All Other"	50.8%	50.6%	
Average Programming Expenditures as a Percentage of Average Regulated Revenue	**22.4%**	**23.6%**	

* Six MSOs responded to the Inquiry; four provided consistent data across a majority of questions.

Programming Service	Launch Date
Nickelodeon/Nick at Nite	Apr-79
Nick at Nite's TV Land	Apr-96
Oasis TV	Sept-97
Outdoor Channel	Apr-93
Planet Central Television	May-95
Playboy TV	Nov-82
Praise Television	Dec-96
Recovery Network	Feb-97
SCOLA	Aug-87
Shop at Home	Jun-86
Showtime	Jul-76
SingleVision	Jun-94
Soap Channel	Jul-98
Spice	May-89
Spice Hot	1998
Student Film Network	Nov-94
Sun TV	Aug-96
Sundance Channel	Feb-96
Telemundo	Jan-87
TNN: The Nashville Network	Mar-83
Toon Disney	Apr-98
Total Communications Network	Nov-95
Trinity Broadcasting Network	Apr-78
TRIO	Sep-94
Tropical Television Network	Aug-96
TV 5 - La Television Internationale	Jan-98

by-tier basis. The Commission also could have limited programming cost and/or other external cost pass-throughs by other means. For example, the 7.5% markup on programming costs could have been eliminated. Alternatively, or in addition, external costs could have been capped, perhaps at the level of inflation, with or without an additional allowance for profit. Adoption of this type of cap on programming cost pass-throughs could have prompted operators to use advertising revenues to pay for a portion of programming costs, but would not have required operators or regulators to account for advertising costs and revenues on a channel-by-channel or tier-by-tier basis. The Commission previously considered such a cap on external cost pass-throughs, but declined to adopt it out of a concern for the continued growth of programming.[78]

C. Effect of Affiliation on Programming Costs

42. Information provided by the Inquiry participants did not permit an in depth analysis of the effects of affiliation on programming costs and subscriber rates. Our rules require that license fees charged by programmers to their affiliated operators must reflect either the same rates as those charged to unaffiliated operators or the fair market value of the programming.[79] Data from the Inquiry show that, on average, the ratios of affiliated programming networks to all programming networks (12%), and expenditures on affiliated programming to total programming expenditures (10.4%), are roughly similar. Without examining programmers' costs and pricing practices, which was beyond the scope of this Inquiry, it is impossible to evaluate the effects of affiliation on rates. Nevertheless, the data that we did collect do not suggest that cable operators' programming costs are either systematically higher or systematically lower for affiliated channels than for unaffiliated channels.

D. Revenues

43. Under the Commission's rules, advertising revenues are accounted for in rates only through the cost-of-service rate method, which is used infrequently. Advertising revenues earned by Inquiry participants, other operators, and programmers have grown steadily in recent years. The Inquiry indicates that advertising revenues are not a major source of revenue for operators at this time, since they are equal to about 8% of regulated revenues as of June 30, 1997.[80] Revenues from sales commissions and launch fees appear to be relatively insignificant compared to overall revenues, and there appears to have been little or no growth in these revenues in recent years.

V. Conclusion

44. While rate increases for the most part have been accompanied by upgrades in system infrastructure, rate increases consistently several times the rate of inflation have engendered numerous critics of the rate-setting policies of cable operators and of the Commission's rate regulations permitting

[78] *Rate Order*, 8 FCC Rcd at 5788.

[79] 47 C.F.R. 76.922(f)(6). This provision suggests that, for a given program service, charges to affiliated and unaffiliated operators should not differ based solely on affiliation status.

[80] It should be noted, however, that average advertising revenues represent a significantly higher percentage when compared with average expenditures for programming on regulated services (35.2%) than when compared with average regulated revenues (8%).

TABLE D-3
Regional Video Programming Services

Programming Service	Launch Date	MSO Ownerhsip (%)
Arabic Channel	Apr-91	
Automotive Television Network (ATN)	Sep-95	
BAYTV	Jul-94	TCI (49)
Cable TV Network of New Jersey	Jul-93	
California Channel	Feb-91	
Casa Club TV	Jul-97	
ChicagoLand Television News (CLTV)	Jan-93	
CN8 - The Comcast Network	1996	Comcast (100)
Comcast SportsNet	Oct-97	Comcast (46)
County Telvision Network San Diego	Jul-96	
Ecumenical Television Channel	1983	
Empire Sports Network	Dec-90	
Florida's News Channel	Sep-98	
Fox Sports Arizona	Sep-96	TCI (50)
Fox Sports Bay Area	Apr-90	TCI (35)
Fox Sports Chicago	Jan-84	TCI (35), Cablevision (45)
Fox Sports Cincinnati	1989	TCI (20), Cablevision (45)
Fox Sports Detroit	Sep-97	TCI (50)
Fox Sports Intermountain West	1990	TCI (50)
Fox Sports Midwest	1989	TCI (50)
Fox Sports New England	Nov-81	TCI (10), Cablevision (22.5), MediaOne (50)
Fox Sports New York	1982	TCI (18), Cablevision (41.5)

2. Launch Fees

34. Launch fees are paid by a programmer to an operator, usually on a per-subscriber basis, as an incentive for the operator to add the programmer's service. Operators that had used the Operator's Cap method for channel additions were required to use launch fee revenues received from any programmer first to offset the permitted per-channel Operator's Cap rate increase for that programming service. Any remaining launch fee revenues were then required to be used to offset programming costs.[70] The Bureau determined that no offsetting was required if the payment was used to cover "verifiable and reasonable promotional expenses" incurred by an operator to market the new programming.[71] The Bureau later clarified that the channel-by-channel standard for offsetting would be applied on a programmer-specific basis where a single cable channel is shared by different programming services.[72]

35. Only two Inquiry participants provided information on revenues from launch fees, and for those two MSOs launch fees amounted to a tiny fraction of total regulated revenues. One MSO reported that launch fees are an unreliable source of revenue, and that this source of revenue may disappear in the future as more channel capacity becomes available with the introduction of digital capability.

3. Sales Commissions

36. Sales commissions are revenues from programming, such as home shopping channels, that programmers pay cable operators in exchange for carriage. Operators must use sales commission revenues to offset, on a channel-by-channel basis, the cost of the programming from which such revenues are derived.[73] As a practical matter, the rate benefit derived from such offsets, if any, is minimal, because home shopping programmers typically do not charge operators license fees to carry their programming.[74]

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[70] 47 C.F.R. § 76.922(g)(3)(ii).

[71] Letter dated May 19, 1994, from Kathleen M. Wallman, Acting Chief, Cable Services Bureau, to Frederick Kuperberg, Senior Vice-President, The Disney Channel, 9 FCC Rcd 7762 (1994). The Bureau stated: "As long as, in individual cases, the reimbursements are part of a reasonable marketing plan and it does not appear that the operator and the programmer have significantly altered reimbursement practices primarily in order to avoid offsetting, we will not require application of" the offset rule. *Id.* at 7763-64.

[72] Letter dated December 19, 1994, from Meredith J. Jones, Chief, Cable Services Bureau, to Maurita K. Coley, Senior Vice President, Legal Affairs, Black Entertainment Television, Inc., 10 FCC Rcd 685 (1994). Operators seeking to recover the costs of programming added to a shared channel must obtain Commission permission to do so without off-setting the revenues against the programming costs. *Id.* at 686 n.6.

[73] Home shopping network operators initially were required to offset the 20 cent per-channel Operator's Cap mark-up with sales commission revenues received from such channels. *Rate Regulation*, MM Docket Nos. 92-266 & 93-215, Twelfth Order on Reconsideration, 11 FCC Rcd 785, 789 (1995). The Commission later eliminated this requirement because of administrative and practical difficulties, stating that "the revenues derived from sales commissions can vary with each reporting period which renders difficult the incorporation of these fluctuations into the ratemaking process." *Id.* at 790.

[74] *Id.* at 789.

Programming Service	Launch Date	MSO Ownerhsip (%)
Newschannel 8	Oct-91	
Nippon Golden Network	Jan-82	
NorthWest Cable News	Dec-95	
Orange County NewsChannel	Sep-90	
PASS Sports (Pro-Am Sports System)	Apr-84	
Pennsylvania Cable Network (PCN)	Sep-79	
Pittsburgh Cable News Channel (PCNC)	Jan-94	
PRISM	Sep-76	
Six News Now	Jul-95	
South Florida Newschannel	1998	
SportsChannel Florida	Dec-87	TCI (6), Cablevisoin (13.5)
SportsChannel New York	1976	
Sunshine Network	Mar-88	TCI (27), MediaOne (7.5), Comcast (16), Cox (5.3)

Sources:
National Cable Television Assoc, *Regional Video Services*, Cable Television Developments, Spring 1998, at 98-116. Liberty Media Press Release, *Cablevision's Rainbow Media and Fox/Liberty Complete Transaction to Create Sports Partnership*. Dec. 18, 1997, at 1. R. Thomas Umstead, *ESPN Lands $600M NHL Deal*, Multichannel News, Aug. 31, 1998, at 10. R. Thomas Umstead, *Ops Eye Low-Cost Local Heroes*, Multichannel News, May 4, 1998, at 74. See also Table D-1 Sources.

28. The 1997 Price Survey indicated that 11% of rate increases during the 12-month period ending July 1, 1997, were attributable to infrastructure upgrades.[60] The Inquiry found that upgrades, in general, comprised a higher proportion -- 18% -- of average monthly rate increases than the proportion indicated by the Price Survey for the same period.[61] MSOs with social contracts reported substantial upgrades pursuant to their social contracts with the Commission. One such MSO adds, however, that its upgrade costs have substantially exceeded its upgrade-related rate increases. Three MSOs reported that although they have completed system upgrades and, in some cases, have expended considerable sums to do so, they have not sought to recover their upgrade costs in regulated subscriber rates. One MSO states that it has used borrowed funds as well as revenues from advertising and other non-regulated sources to finance over $3.5 billion in upgrades. Another MSO states that, in addition to rates for regulated services, it has drawn on advertising revenues, home shopping commissions, and launch and marketing fees to finance its upgrades.

D. Revenues

29. Operators earn revenues not only on regulated subscriber services but also from unregulated subscriber services (such as premium and pay-per-view channels) and non-subscriber sources, such as launch fees and sales commissions paid by programmers and from local advertising. The 1992 Cable Act required the Commission to evaluate a number of factors when it established regulations to ensure that cable television rates are reasonable. Among other things, the Act required the Commission to consider "the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned."[62]

30. Operators that increase their rates to recover increased programming costs must adjust their permitted rates, on a channel-by-channel basis, to account for any revenues received from programmers, such as sales commissions.[63] Offsetting is designed to permit operators to recover only their net programming costs.[64] The Commission determined that off-setting "best balances the interest of the cable operator in being compensated for adding new programming and the interest of subscribers in receiving reasonable rates."[65] Under the channel-by-channel offsetting method, operators are not required to use revenues derived from programming on one channel to offset the costs of programming carried on another

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[60] *Price Survey Report*, 12 FCC Rcd at 22766.

[61] An explanation for the higher proportion attributable to system upgrades found in the Inquiry in comparison with the Price Survey is that the four MSOs who provided consistent information include a higher proportion of operators with social contracts (two out of four) than the Price Survey sample. For all six MSOs responding to the Inquiry, 9.9% of the total change in average monthly rates was attributable to system upgrades.

[62] Communications Act § 623(c)(2)(F), 47 U.S.C. § 543(c)(2)(F).

[63] 47 C.F.R. § 76.922(f)(7); *see* Letter dated May 6, 1994, from Alexandra M. Wilson, Acting Chief, Cable Services Bureau, to Sue D. Blumenfeld and Philip L. Verveer, QVC Network, Inc., 75 Rad. Reg. 2d (P & F) 292 (1994).

[64] *Rate Order*, 8 FCC Rcd at 5789 n.602.

[65] *Sixth Order on Reconsideration*, 10 FCC Rcd at 1252.

Programming Service	Expected Launch Date
Genesis Network	Not Announced
GETv Network	Not Announced
Global Village Network	Not Announced
Hobby Craft Communications	2nd Qtr. 1999
Home Improvement TV Network	Not Announced
Jim Henson Network	Not Announced
Locomotion	4th Qtr. 1998
M1	Not Announced
Martial Arts Action Network	1999
MBC Movie Network	Not Announced
Men's Entertainment Network (MEN)	3rd Qtr. 1999
Museum Channel	Not Announced
Native American Nations Program Network	Not Announced
Nickelodeon Game & Sports	January 1999
Nick Too	January 1999
Noggin	January 1999
Orb TV	Not Announced
Outlet Mall Network	Not Announced
Oxygen	January 2000
Parents Channel	Not Announced
Performance Showcase	Not Announced
Planet Central Television	Not Announced
Premiere Horse Network	Not Announced
Puppy Channel	Not Announced
RadioTV Network	Mid-1999

19.4%), \$0.08 (or 11.9%), \$0.03 (or 4.5%), and \$0.43 (or 64.2%), respectively, to the subcategories of sports, news, children's, and "all other" programming. Table 2 and Chart 3 show this breakdown for the year ending July 1, 1997.

23. Applying these amounts to the total increase in rates between July 1, 1996, and July 1, 1997, we found that the increase in aggregate expenditures for sports programming license fees accounted for 5.3% of the total increase in rates over that period (\$0.13 divided by \$2.45 equals 5.3%). On the same basis, increases in expenditures for news and children's programming[50] accounted for 1.2% and 3.2%, respectively, of the total increase in rates for that period. The "all other," or general entertainment, category accounted for 17.6% of the total increase in rates.[51]

24. On average, for the year ending July 1, 1997, the Inquiry participants reported that 10.4% of the total increase in license fees was attributable to affiliated programming. These same MSOs reported that, for the same period, affiliated programming networks accounted for 12% of all programming networks[52] on their regulated tiers. Increases from unaffiliated programmers accounted for the remaining 89.6% of the total increase in license fees, while unaffiliated programming networks accounted for 88% of all programming networks carried. The four MSOs responding to this question included a mix of operators with widely varying degrees of affiliation. For the year ending July 1, 1997, for example, the most vertically integrated operator reported that approximately 23% of its average regulated channels provided programming from affiliated programmers. This operator also attributed approximately 29% of its programming cost increases to affiliated programmers for the same time period. The least vertically integrated operator, by contrast, reported that approximately 4% of its average regulated channels provided programming from affiliated programmers. For the same time period, that operator attributed approximately 4% of its programming cost increases to affiliated programmers.

B. Channel additions

25. The Commission's channel addition rules allow operators to recover programming costs and other costs incurred when operators add channels to their systems. Until December 31, 1997, operators were permitted to increase their rates using either of two methods to account for the addition of channels to CPSTs and single-tier systems after May 15, 1994. The two methods of rate adjustment were the per-channel adjustment factor and the Operator's Cap.[53] Neither method is currently available

[50]One MSO notes that reported increases in the cost of children's programming are partially due to the migration of the Disney Channel from unregulated premium status to a regulated tier.

[51]Of the 28.2%, the amount of average monthly rate change attributed to programming cost increases, the sum of the four subcategories account for 27.3%. The remaining 0.9% is attributable to non-license fee programming cost increases.

[52]The term "all programming networks" refers to all channels on regulated tiers including broadcast and PEG channels as well as satellite channels.

[53]The Commission modified its initial rules to allow operators to increase their rates by a per-channel adjustment factor to reflect the addition of new channels and to add a 7.5% markup to recoverable programming costs. (*Second Order on Reconsideration*, 9 FCC Rcd at 4139.) Under the Operator's Cap method, which was adopted in a later modification to the rules, operators were permitted to increase their monthly CPST rates during calendar years 1995

(continued...)

TABLE D-5
MSO Ownership in National Programming,
MSOs Ranked in Order of Number of Subscribers

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Action Pay-Per-View	8.0	35%						
AMC	68.0						75%	
Animal Planet	40.7	49%				24.6%		
BBC America	*	24.6%				12.3%		
BET	54.2	35%						
BET on Jazz	3.5	35%						
BET Movies	3.5	81%						
The Box Worldwide	26.8	78%						
Bravo	35.0						75%	
Canales ñ	*	100%						
Cartoon Network	51.3		100%					
CBS Eye on People	11.0	24.6%				12.3%		
Cinemax	32.0		100%					
Cinemax2	(1)		100%					
CNN	73.7		100%					
CNNfn	2.4		100%					
CNN Headline News	68.6		100%					
CNN International	2.8		100%					
CNN/SI	.6		100%					

to in the questionnaire as "all other").[39] The average aggregate expenditures for each subcategory of programming are shown in Table 1. On average, sports programming accounted for 26.7% of total expenditures for regulated programming in 1997 (or $127.6 million); news programming accounted for 11.2% (or $53.3 million) of the total; children's programming accounted for 11.5% (or $55.1 million); and the "all other" category accounted for 50.6% (or $242.1 million) of total programming expenditures. As shown in Table 1, average aggregate expenditures for the four subcategories of programming -- sports, news, children's, and "all other" increased by 16.3%, 25.8%, 24.6% and 19.9%, respectively, between 1996 and 1997. The results show, therefore, that between 1996 and 1997 sports programming had the lowest rate of increase in aggregate expenditures of the four subcategories of programming.

17. One MSO pointed out that although "sports programming costs get the headlines, huge increases in expenditures by cable programming networks are the rule."[40] The MSO states that cable programming network expenditures to produce basic cable programming increased eight-fold, from $482 million to $4 billion, from 1986 to 1998.[41]

18. Summit states that small operators lack the market power to negotiate favorable programming rates and cannot obtain volume discounts. Summit alleges that some programmers refuse to negotiate with the National Cable Television Cooperative, which purchases programming on behalf of its small-operator members. As a result, according to Summit, small operators have little control over their programming costs.

2. Programming costs as a factor contributing to recent rate increases

19. In their public statements, operators have identified programming costs, and the costs of sports programming in particular, as one of the major reasons for recent rate increases. In addition, at least one industry study has concluded that sports and entertainment programming costs have escalated subsequent to the period under review at a rate that far exceeds the general rate of inflation.[42] In the case of sports programming, news accounts within the past year of bidding wars and unprecedented fees for sports broadcast rights lend credence to the proposition that sports programming costs are indeed escalating rapidly.[43] These more recent cost increases are not reflected in the Inquiry responses.

[39]For purposes of this report, the term "general entertainment programming" means all programming except sports, news, and children's programming.

[40]The MSO cites "Basic Nets: Quality Costs Money," *Multichannel News*, June 8, 1998, pp. 3, 18.

[41]*Id.*

[42]Kagan Media Appraisals, Inc., *TV Programming Costs: An Analysis of the Market Forces Driving Entertainment and Sports Rights Fees* (Dec. 1997) ("Kagan Study"). The Kagan Study attributes this trend to increases in sports player salaries, the distribution fees charged by sports leagues and team owners, entertainment production costs, and licensing fees for movies and off-network syndicated programming.

[43]*See, e.g.*, Michael Hiestand, "The NFL's $17.6 Billion Payday; Broadcasters See Football as Necessary to Survival," USA TODAY, Jan. 14, 1998, at 1A; Leslie Cauley, "ESPN's New Football Deal Is Expected To Boost Rates for Cable TV Next Year," WALL ST. J., Jan. 16, 1998, at B6.

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Fox Sports Americas	9.0	25%						
Fox Sports Direct	5.2	50%						
Fox Sports Net	57.0	25%					37.5%	
Fox Sports World	.4	50%						
FX	35.8	50%						
GEMS International Television	11.0					50%		
Golf Channel	17.3			14.4%	43.3%			
Great American Country	3.0							100%
HBO	(1)		100%					
HBO 2	(1)		100%					
HBO 3	(1)		100%					
HBO Family	(1)		100%					
Home Shopping Network	53.2	18.6%		<1%				
Home Shopping (Spree!)	12.4	18.6%		<1%				
Independent Film Channel	15.0						75%	
International Channel	8.0	90%						
Kaleidoscope	15.0	12%						

11. In the Price Survey, the Commission identified the main factors that contributed to changes in cable rates between July 1, 1995 and July 1, 1997. The Price Survey indicated that for the noncompetitive segment of the cable industry, which accounts for the bulk of the industry,[28] 34% of total permitted rate increases during the 12-month period ending July 1, 1997, were attributable to inflation adjustments; 29% of total rate increases were attributable to programming cost increases; 13% were attributable to channel additions; 11% to system upgrades; 8% to higher equipment costs; and 5% to "other" cost increases. Chart 2 provides a graphic display of this breakdown. Through the Inquiry, the Bureau sought additional detailed information on three of these factors: programming costs, channel additions, and system upgrades. The Bureau also sought information on expenditures for programming services with affiliated versus unaffiliated programmers, and information on non-subscriber revenues. The major findings of the Inquiry are summarized below.

III. Findings

12. The results of the Inquiry tracked the findings of the Price Survey Report for those aggregate measures where the two surveys overlapped. For example, the 1997 Price Survey found that, on average, the noncompetitive group of cable operators charged $28.83 per month for programming services (BST and CPST) and equipment as of July 1, 1997.[29] As shown in Table 2, the Inquiry participants (based on four responses) charged $28.62, on average, for the same services as of the same date.[30]

A. Programming costs

13. The Commission's rules allow operators to pass through new programming costs, which are defined as "external costs," since operators have little or no control over these costs.[31] When the Commission adopted its rate regulations, it noted that programming costs had increased at a rate "far exceeding the rate of inflation."[32] Acknowledging that the pass-through of new programming costs could have adverse effects on subscriber rates, the Commission concluded that excessive rate increases due to programming cost increases could cause operators to lose subscribers and that this threat would temper

[28]The 1997 Price Survey found that as of July 1997, approximately 2.0 million cable subscribers, or 3.2% of all subscribers served, received service from a cable operator that faces effective competition. The remaining 59.7 million subscribers, or 96.8% of all cable subscribers, were served by cable operators that do not face effective competition, i.e., the noncompetitive segment of the industry. Within this group, 34.9 million subscribers (58.5%) received service from regulated systems, and 24.8 million (41.5%) received service from unregulated systems. (*See Price Survey Report*, 12 FCC Rcd at 22759 & n.14. Total subscribership as of October 1996 was 61.7 million. *Id.* at 22759 n.12.)

[29]*Price Survey Report*, 12 FCC Rcd at 22765.

[30]For all six MSOs, the average rate was $28.32.

[31]47 CFR § 76.922(f).

[32]*Rate Order*, 8 FCC Rcd at 5787.

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Travel Channel	18.4	49%				24.6%		
Turner Classic Movies	28.4		100%					
USA Network	73.7	18.6%		<1%				
Viewers Choice 1-10	19.0	10%	17%	10%	10%	20%		
Wingspan	*	49%				24.6%		

Notes:
In addition to cable, other services such as MMDS (wireless cable), SMATV (satellite master antenna television), satellite, including HSD (home satellite dish) and DBS (direct broadcast satellite), broadcast television and LPTV (low power television) may distribute these signals. Subscriber figures may include these noncable services.

* Indicates that subscribership count is unknown or not available.
(1) Subscribership of 32.0 million includes all Cinemax and HBO channels.
(2) Subscribership of 12.3 million includes all of Encore's six Thematic Multiplex channels.

Sources:
Sources for subscriber counts: Paul Kagan Assocs., Inc., *June 30 Network Census*, Cable Program Investor, Aug. 14, 1998, at 11. National Cable Television Assoc, *National Video Services*, Cable Television Developments, Spring 1998, at 28-97. *Liberty Media Assets as of 5/15/98*, at http://www.tci.com/libertymedia.com/liberty.pgs/libertyfinancial.html on Aug. 21, 1998. Sources for ownership percentages: <u>See</u> Table D-1 sources.

homeowners to install satellite dishes or other antennae on their property.[22] It has given alternative video distributors access to wiring installed by cable operators in multiple dwelling units ("MDUs").[23] However, the Commission's statutory authority does not extend to certain additional areas which potentially could foster additional competition. For example, satellite providers are effectively prohibited from carrying local network broadcast signals under the Satellite Home Viewer Act.[24] Also, there are limits on our authority to mandate access to programming when the programming in question is delivered terrestrially rather than by satellite.[25] Finally, the Commission's impact on competition in MDUs is limited because the Commission's inside wiring regulations extend only to circumstances where the incumbent video services provider no longer has a legal right to remain in the building. The measures the Commission has taken have helped to promote competition, but competition remains the exception, not the rule.

II. Methodology of the Inquiry

7. To conduct the Inquiry, the Bureau prepared a questionnaire and distributed it to the six largest (in terms of subscriber size) cable television industry MSOs. Participation in the Inquiry was voluntary. The Bureau sought to build on information that was gathered in the Price Survey. The questionnaire was designed to assist the Bureau in examining certain specific operator costs, in particular their expenditures for programming services, the effects of system upgrades on rates, and operators' major sources of non-subscriber revenues. The six MSOs selected for participation were: Cablevision Systems Corporation; Comcast Corporation; Cox Communications, Inc.; MediaOne, Inc; TCI Communications, Inc.; and Time Warner Cable. Collectively, these six MSOs serve approximately 67% of all cable subscribers.

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[22]The Commission recently modified these rules to permit viewers who rent property to install and use antennas where they have exclusive use (e.g., balconies or patios). The rules had applied previously only to viewers who owned property. *See In the Matter of Preemption of Local Zoning Regulation of Satellite Earth Stations* (IB Docket No. 95-59), *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996* (CS Docket No. 96-83): *Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276 (1996); *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Order on Reconsideration, 13 FCC Rcd 18962 (1998); *and In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Second Report and Order, FCC 98-273 (rel. Nov. 20, 1998).

[23]*See In the Matter of Telecommunications Services, Inside Wiring and Customer Premises Equipment* (CS Docket No. 95-184), *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992* (MM Docket No. 92-260): *Cable Home Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1997).

[24]17 U.S.C. § 119. The Commission has issued a Notice of Proposed Rulemaking in response to two petitions concerning the Satellite Home Viewer Act. *See In the Matter of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act - Part 73 Definition and Measurement of Signals of Grade B Intensity*, CS Docket No. 98-201, Notice of Proposed Rulemaking, FCC 98-302 (rel. Nov. 17, 1998).

[25]*See, e.g., In the Matter of DIRECTV, Inc., Complainant, v. COMCAST Corporation, COMCAST-SPECTACOR, L.P., COMCAST SPORTSNET, Defendants*, CSR 5112-P, Memorandum Opinion and Order, DA 98-2151 (rel. Oct. 27, 1998).

Rank	Programming Network (Top 50)	Number of Subscribers (Millions)	MSO Ownership Interest in Network (%)
23	Home Shopping Network	53.2	TCI (18.6)
24	Cartoon Network	51.3	Time Warner (100)
25	C-SPAN2	51.1	None
26	Comedy Central	51.1	Time Warner (50)
27	Prevue Channel	50.8	TCI (12)
28	E! Entertainment	50.0	Comcast (39.6), Media One (10.4), TCI (10.4)
29	Sci-Fi Channel	49.6	TCI (18.6)
30	History Channel	49.6	None
31	CMT (Country Music Television)	42.2	None
32	Disney Channel	41.9	None
33	MSNBC	41.0	None
34	Animal Planet	40.7	TCI (49), Cox (24.6)
35	Sneak Prevue	36.0	TCI (12)
36	FX	35.8	TCI (50)
37	Bravo	35.0	Cablevision (75)
38	Court TV	34.1	TCI (50), Time Warner (50)
39	Food Network	33.1	Media One (5), Cox (1), Time Warner (1)
40	Fox News Channel	32.0	None
41	Odyssey Channel	30.1	TCI (32.5)
42	Nick at Night's TV Land	29.1	None
43	Turner Classic Movies	28.4	Time Warner (100)
44	Box Worldwide	26.8	TCI (78)
45	Knowledge TV	26.0	Jones (97)
46	Travel Channel	18.4	TCI (49), Cox (24.6)

period ending July 1, 1997, and that advertising revenue equaled about 8% of regulated revenues at the end of this period.[12] Several Inquiry participants noted that some portion of this growth was attributable to factors such as system upgrades, additional channels, subscriber growth, clustering, and system acquisitions. The average advertising revenue earned by Inquiry participants in 1996 and 1997 is shown in Chart 4.

5. The Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act")[13] required the Commission to ensure that rates were reasonable[14] and "that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems."[15] In the first two years after the Act -- 1993 and 1994 -- the Commission successfully sought to check the rapid increases in cable rates that were occurring prior to passage of the Act, as evidenced from the downward trend of cable rates for those two years shown in Chart 1. For the period from 1995 through 1997, the Commission adopted rules, related to channel additions, designed to provide an incentive to cable operators to expand the capacities of their systems and increase their programming services. During this period, operators completed system upgrades and expanded their program offerings.[16] The cost of this expansion was significant, resulting in increases consistently several times higher than inflation. This incentive for expansion of services appears to have significantly contributed to the rate increases that took place during the period under study. The channel addition rules expired at the end of 1997 and are no longer available.[17] The 1996 Act eliminates most rate regulation of cable operators after March 1999.

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[12]Other sources of non-subscriber revenues -- in particular, sales commissions -- represented only 1% of regulated revenues.

[13]Cable Television Consumer Protection and Competition Act § 3, Pub. L. No. 102-385, 106 Stat. 1460 (1992), *codified at* Communications Act of 1934 ("Communications Act").

[14]Communications Act § 623(b)-(c), 47 U.S.C. § 543(b)-(c).

[15]1992 Cable Act § 2(b)(3), 106 Stat. 1463 (not codified).

[16]*See* Paul Kagan Assoc., Inc., *Cable TV Programming*, Aug. 31, 1997, at 1. By 1997, for example, approximately 40% of all subscribers were served by systems that had been upgraded to 750 MHz, and channel capacity on the average system had increased to 53. *See also* National Cable Television Association ("NCTA"), *Cable Television Developments*, Spring 1998, at 6. The number of cable programming networks also grew over this period, increasing from 139 in 1995 to 171 in 1998. Systems with 750 MHz of capacity currently are regarded as advanced systems. They can offer 116 6-MHz analog channels and typically include fiber-to-the-node architecture and other features designed to improve reliability and signal quality. By 1998, it is estimated that 57% of cable subscribers will be served by systems that are upgraded to 750 MHz, and average channel capacity is projected to increase to 61 channels. Paul Kagan Associates notes that the larger cable systems serve most cable subscribers, and that these systems offer, on average, many more channels than smaller systems offer. Thus, on a subscriber weighted basis, average channel capacity would be higher.

[17]47 C.F.R. § 76.922(g).

TABLE D-7
Top 15 Programming Services
by Prime Time Rating

Rank	Programming Service	MSO with Ownership Interest (%)
1	TNT	Time Warner (100)
2	USA Network	TCI (18.6)
3	Nickelodeon/Nick at Nite	None
4	TBS	Time Warner (100)
5	Lifetime Television	None
6	Cartoon Network	Time Warner (100)
7	ESPN	None
8	Fox Family Channel	None
9	A&E	None
10	Discovery Channel	TCI (49), Cox (24.6)
11	TNN (The Nashville Network)	None
12	TLC (The Learning Channel)	TCI (49), Cox (24.6)
13	CNN	Time Warner (100)
14	FX	TCI (50)
15	Comedy Central	Time Warner (50)

Notes:
Superstations included in the source data are not included in this ranking.

Source:
Paul Kagan Assocs., Inc., *Second Quarter 1998 Prime-Time Ratings*, Cable Program Investor, Aug. 14, 1998, at 6.

APPENDIX F

INQUIRY CONCERNING CABLE TELEVISION PROGRAMMING COSTS

Report of the Cable Services Bureau

I. Introduction and Summary of Findings

1. In an effort to identify the sources of recent cable television programming cost increases, the Cable Services Bureau ("the Bureau") commenced an inquiry designed to shed light on discrete subcategories of programming costs, as well as on other matters related to cable operators' costs and revenues ("the Inquiry"). The Inquiry was prompted by the Commission's 1997 Annual Report on Video Competition ("Competition Report")[1] and its 1997 Report on Cable Industry Prices ("Price Survey").[2] The Price Survey indicated that monthly subscriber rates charged by noncompetitive cable systems increased, on average, by 8.5% during the year ended July 1, 1997, following increases of approximately 8.8% during the previous year.[3] These increases come at a time when general inflation, as measured by the Consumer Price Index ("CPI"), is relatively mild. The CPI rose by 2.23% and 2.95%, respectively, during the two-year period under review.[4] A chart comparing the trend of the general CPI since 1990 with the trend of the Cable CPI for the same period is attached as Chart 1. More recently, cable rates continue to rise approximately four times the rate of inflation. According to the Bureau of Labor Statistics, between June 1997 and June 1998, cable rates rose 7.3%, considerably more than the 1.7% increase in the CPI during the same period.[5]

2. The Inquiry generally confirmed the Price Survey findings regarding the relative effect on cable rates of programming costs, channel additions, and infrastructure upgrades under Commission rules.[6] Programming costs include license fees, retransmission consent and copyright fees, and markups associated with programming cost increases; all of which are recoverable by cable operators under

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[1] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Dkt. No. 97-141, Fourth Annual Report *("Competition Report")*, 13 FCC Rcd 1034 (1998).

[2] *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment*, MM Docket No. 92-266, Report on Cable Industry Prices, 12 FCC Rcd at 22756, 22765 (1997) (*"Price Survey Report"*).

[3] *Id.* On a per-channel basis, however, the increase in rates was closer to the general rate of inflation. On a per-channel basis, average monthly rates increased by 1.7% and 3.3%, respectively, for the years ending July 1, 1996 and July 1, 1997.

[4] We do not mean to suggest that the CPI is the appropriate measure of the reasonableness of cable rates, especially during a period of considerable investment in cable plant and programming.

[5] The per-channel rate increase for the year ending July 1, 1998 is not yet available.

[6] 47 CFR § 76.922 (f), (g), and (j).

APPENDIX E

Program Access Matters Resolved

1. In a program access complaint dismissed in 1998, EchoStar Communications Corporation ("EchoStar") alleged that Rainbow Media Holdings, Inc. and Rainbow Programming Holdings, Inc. (collectively "Rainbow") discriminated in the prices, terms and conditions of programming offered to EchoStar, unreasonably refused to sell its programming to EchoStar, and engaged in unfair methods of competition or unfair acts and practices. EchoStar subsequently requested that the program access complaint be dismissed with prejudice, indicating that it and Rainbow amicably settled the issues in its complaint. Accordingly, the Cable Services Bureau ("Bureau") dismissed the proceeding with prejudice.

2. In a program access complaint decided in 1998, EchoStar alleged that FX Networks, LLC ("FX") and Fox/Liberty Networks, LLC ("Fox/Liberty") refused to provide its programming to EchoStar because of prohibited exclusive contracts that FX had with cable operators across the country. EchoStar alleged that FX's refusal to deal with EchoStar regarding such programming violated the Commission's prohibition on exclusive contracts, and constituted an unreasonable refusal to sell in violation of Section 628(c) of the Communications Act and Section 76.1002(b) of the Commission's rules[1] and an unfair practice in violation of Section 628(b) of the Act and Section 76.1001 of the Commission's rules.[2] In response, FX argued that its exclusive contracts were lawful when entered into because FX was not a vertically integrated programmer at the time, and that its subsequent vertical integration did not negate the validity of these agreements. The Bureau found that FX unreasonably refused to sell its programming to Echostar in violation of Section 628(c) of the Communications Act and Section 76.1002(b) of the Commission's rules. In granting the complaint, the Bureau stated that FX's once valid exclusive contracts did not in themselves justify its refusal to sell to Echostar.

3. In a similar program access matter, Corporate Media Partners, d/b/a Americast ("Americast"), and its telephone company partners, Ameritech Media Ventures, Inc., BellSouth Interactive Media Services, Inc., GTE Media Ventures Incorporated, and SNET Personal Vision, Inc., filed a complaint against FX, Fox/Liberty and Tele-Communications, Inc. ("TCI"). As with the Echostar complaint described above, Ameritech alleged that FX had refused to provide its programming to EchoStar because of prohibited exclusive contracts that FX had with cable operators across the country. FX acknowledged that the facts and circumstances surrounding Americast's complaint were materially indistinguishable from those examined by the Commission in the EchoStar proceeding, and offered no additional legal justification for its conduct. Consistent with the EchoStar proceeding, the Bureau found that FX unreasonably refused to sell its programming to Americast in violation of Section 628(c) of the Communications Act and Section 76.1002(b) of the Commission's rules.[3]

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[1]Communications Act §628(c), 47 U.S.C. § 548(c); 47 C.F.R. § 76.1002(b).

[2]Communications Act §628(b), 47 U.S.C. § 548(b); 47 C.F.R. § 76.1001.

[3]Subsequent to the Bureau's decision in this matter, TCI filed a letter stating that it had notified Americast, prior to the Bureau's decision, that it would not claim the benefit of, and would not seek to enforce, any exclusivity arrangement it had regarding the FX programming service that would prevent FX from authorizing the carriage of its programming by Americast. Accordingly, the Bureau issued a clarification reflecting the information submitted by TCI.

correct reading of Section 628(c) is that the provisions in question apply to satellite cable programming, not programming that was "previously" satellite-delivered or the "equivalent" of satellite cable programming. In addition, the Bureau did not find evidence that Defendants intended to evade the rules or that, standing alone, Comcast's decision to deliver Comcast SportsNet terrestrially and to deny that programming to DIRECTV was "unfair" under Section 628(b).

8. EchoStar filed a program access complaint against Fox/Liberty Networks LLC, Fox Sports Net LLC and Fox Sports Direct (collectively "Fox"). EchoStar alleges that Fox had engaged in unlawful discrimination against EchoStar in the prices, terms and conditions that Fox imposed upon EchoStar for making available the regional sports programming that it controls. Fox filed an answer denying discrimination and requesting that the Commission dismiss the Complaint with prejudice. Pursuant to Section 76.1003(r)(1) of the Commission's rules, Echostar had one year from the date of entering into the contract with Liberty Satellite Sports, Inc./Fox Sports Direct to file a program access complaint with the Commission. The Bureau dismissed Echostar's complaint with prejudice, finding that it was barred by the one year limitations period.

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[15]1992 Cable Act § 2(b)(3), 106 Stat. 1463 (not codified).

[16]*See* Paul Kagan Assoc., Inc., *Cable TV Programming*, Aug. 31, 1997, at 1. By 1997, for example, approximately 40% of all subscribers were served by systems that had been upgraded to 750 MHz, and channel capacity on the average system had increased to 53. *See also* National Cable Television Association ("NCTA"), *Cable Television Developments*, Spring 1998, at 6. The number of cable programming networks also grew over this period, increasing from 139 in 1995 to 171 in 1998. Systems with 750 MHz of capacity currently are regarded as advanced systems. They can offer 116 6-MHz analog channels and typically include fiber-to-the-node architecture and other features designed to improve reliability and signal quality. By 1998, it is estimated that 57% of cable subscribers will be served by systems that are upgraded to 750 MHz, and average channel capacity is projected to increase to 61 channels. Paul Kagan Associates notes that the larger cable systems serve most cable subscribers, and that these systems offer, on average, many more channels than smaller systems offer. Thus, on a subscriber weighted basis, average channel capacity would be higher.

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29	Sci-Fi Channel	49.6	TCI (18.6)
30	History Channel	49.6	None
31	CMT (Country Music Television)	42.2	None
32	Disney Channel	41.9	None
33	MSNBC	41.0	None
34	Animal Planet	40.7	TCI (49), Cox (24.6)
35	Sneak Prevue	36.0	TCI (12)
36	FX	35.8	TCI (50)
37	Bravo	35.0	Cablevision (75)
38	Court TV	34.1	TCI (50), Time Warner (50)
39	Food Network	33.1	Media One (5), Cox (1), Time Warner (1)
40	Fox News Channel	32.0	None
41	Odyssey Channel	30.1	TCI (32.5)
42	Nick at Night's TV Land	29.1	None
43	Turner Classic Movies	28.4	Time Warner (100)
44	Box Worldwide	26.8	TCI (78)
45	Knowledge TV	26.0	Jones (97)
46	Travel Channel	18.4	TCI (49), Cox (24.6)

homeowners to install satellite dishes or other antennae on their property.[22] It has given alternative video distributors access to wiring installed by cable operators in multiple dwelling units ("MDUs").[23] However, the Commission's statutory authority does not extend to certain additional areas which potentially could foster additional competition. For example, satellite providers are effectively prohibited from carrying local network broadcast signals under the Satellite Home Viewer Act.[24] Also, there are limits on our authority to mandate access to programming when the programming in question is delivered terrestrially rather than by satellite.[25] Finally, the Commission's impact on competition in MDUs is limited because the Commission's inside wiring regulations extend only to circumstances where the incumbent video services provider no longer has a legal right to remain in the building. The measures the Commission has taken have helped to promote competition, but competition remains the exception, not the rule.

II. Methodology of the Inquiry

7. To conduct the Inquiry, the Bureau prepared a questionnaire and distributed it to the six largest (in terms of subscriber size) cable television industry MSOs. Participation in the Inquiry was voluntary. The Bureau sought to build on information that was gathered in the Price Survey. The questionnaire was designed to assist the Bureau in examining certain specific operator costs, in particular their expenditures for programming services, the effects of system upgrades on rates, and operators' major sources of non-subscriber revenues. The six MSOs selected for participation were: Cablevision Systems Corporation; Comcast Corporation; Cox Communications, Inc.; MediaOne, Inc; TCI Communications, Inc.; and Time Warner Cable. Collectively, these six MSOs serve approximately 67% of all cable subscribers.

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[22]The Commission recently modified these rules to permit viewers who rent property to install and use antennas where they have exclusive use (e.g., balconies or patios). The rules had applied previously only to viewers who owned property. *See In the Matter of Preemption of Local Zoning Regulation of Satellite Earth Stations* (IB Docket No. 95-59), *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996* (CS Docket No. 96-83): *Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276 (1996); *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Order on Reconsideration, 13 FCC Rcd 18962 (1998); *and In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Second Report and Order, FCC 98-273 (rel. Nov. 20, 1998).

[23]*See In the Matter of Telecommunications Services, Inside Wiring and Customer Premises Equipment* (CS Docket No. 95-184), *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992* (MM Docket No. 92-260): *Cable Home Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1997).

[24]17 U.S.C. § 119. The Commission has issued a Notice of Proposed Rulemaking in response to two petitions concerning the Satellite Home Viewer Act. *See In the Matter of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act - Part 73 Definition and Measurement of Signals of Grade B Intensity*, CS Docket No. 98-201, Notice of Proposed Rulemaking, FCC 98-302 (rel. Nov. 17, 1998).

[25]*See, e.g., In the Matter of DIRECTV, Inc., Complainant, v. COMCAST Corporation, COMCAST-SPECTACOR, L.P., COMCAST SPORTSNET, Defendants*, CSR 5112-P, Memorandum Opinion and Order, DA 98-2151 (rel. Oct. 27, 1998).

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Travel Channel	18.4	49%				24.6%		
Turner Classic Movies	28.4		100%					
USA Network	73.7	18.6%		<1%				
Viewers Choice 1-10	19.0	10%	17%	10%	10%	20%		
Wingspan	*	49%				24.6%		

Notes:
In addition to cable, other services such as MMDS (wireless cable), SMATV (satellite master antenna television), satellite, including HSD (home satellite dish) and DBS (direct broadcast satellite), broadcast television and LPTV (low power television) may distribute these signals. Subscriber figures may include these noncable services.

* Indicates that subscribership count is unknown or not available.
(1) Subscribership of 32.0 million includes all Cinemax and HBO channels.
(2) Subscribership of 12.3 million includes all of Encore's six Thematic Multiplex channels.

Sources:
Sources for subscriber counts: Paul Kagan Assocs., Inc., *June 30 Network Census*, Cable Program Investor, Aug. 14, 1998, at 11. National Cable Television Assoc, *National Video Services*, Cable Television Developments, Spring 1998, at 28-97. *Liberty Media Assets as of 5/15/98*, at http://www.tci.com/libertymedia.com/liberty.pgs/libertyfinancial.html on Aug. 21, 1998. Sources for ownership percentages: <u>See</u> Table D-1 sources.

11. In the Price Survey, the Commission identified the main factors that contributed to changes in cable rates between July 1, 1995 and July 1, 1997. The Price Survey indicated that for the noncompetitive segment of the cable industry, which accounts for the bulk of the industry,[28] 34% of total permitted rate increases during the 12-month period ending July 1, 1997, were attributable to inflation adjustments; 29% of total rate increases were attributable to programming cost increases; 13% were attributable to channel additions; 11% to system upgrades; 8% to higher equipment costs; and 5% to "other" cost increases. Chart 2 provides a graphic display of this breakdown. Through the Inquiry, the Bureau sought additional detailed information on three of these factors: programming costs, channel additions, and system upgrades. The Bureau also sought information on expenditures for programming services with affiliated versus unaffiliated programmers, and information on non-subscriber revenues. The major findings of the Inquiry are summarized below.

III. Findings

12. The results of the Inquiry tracked the findings of the Price Survey Report for those aggregate measures where the two surveys overlapped. For example, the 1997 Price Survey found that, on average, the noncompetitive group of cable operators charged $28.83 per month for programming services (BST and CPST) and equipment as of July 1, 1997.[29] As shown in Table 2, the Inquiry participants (based on four responses) charged $28.62, on average, for the same services as of the same date. [30]

A. Programming costs

13. The Commission's rules allow operators to pass through new programming costs, which are defined as "external costs," since operators have little or no control over these costs.[31] When the Commission adopted its rate regulations, it noted that programming costs had increased at a rate "far exceeding the rate of inflation."[32] Acknowledging that the pass-through of new programming costs could have adverse effects on subscriber rates, the Commission concluded that excessive rate increases due to programming cost increases could cause operators to lose subscribers and that this threat would temper

[28]The 1997 Price Survey found that as of July 1997, approximately 2.0 million cable subscribers, or 3.2% of all subscribers served, received service from a cable operator that faces effective competition. The remaining 59.7 million subscribers, or 96.8% of all cable subscribers, were served by cable operators that do not face effective competition, i.e., the noncompetitive segment of the industry. Within this group, 34.9 million subscribers (58.5%) received service from regulated systems, and 24.8 million (41.5%) received service from unregulated systems. (*See Price Survey Report*, 12 FCC Rcd at 22759 & n.14. Total subscribership as of October 1996 was 61.7 million. *Id.* at 22759 n.12.)

[29]*Price Survey Report*, 12 FCC Rcd at 22765.

[30]For all six MSOs, the average rate was $28.32.

[31]47 CFR § 76.922(f).

[32]*Rate Order*, 8 FCC Rcd at 5787.

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Fox Sports Americas	9.0	25%						
Fox Sports Direct	5.2	50%						
Fox Sports Net	57.0	25%					37.5%	
Fox Sports World	.4	50%						
FX	35.8	50%						
GEMS International Television	11.0					50%		
Golf Channel	17.3			14.4%	43.3%			
Great American Country	3.0							100%
HBO	(1)		100%					
HBO 2	(1)		100%					
HBO 3	(1)		100%					
HBO Family	(1)		100%					
Home Shopping Network	53.2	18.6%		<1%				
Home Shopping (Spree!)	12.4	18.6%		<1%				
Independent Film Channel	15.0						75%	
International Channel	8.0	90%						
Kaleidoscope	15.0	12%						

to in the questionnaire as "all other").[39] The average aggregate expenditures for each subcategory of programming are shown in Table 1. On average, sports programming accounted for 26.7% of total expenditures for regulated programming in 1997 (or $127.6 million); news programming accounted for 11.2% (or $53.3 million) of the total; children's programming accounted for 11.5% (or $55.1 million); and the "all other" category accounted for 50.6% (or $242.1 million) of total programming expenditures. As shown in Table 1, average aggregate expenditures for the four subcategories of programming -- sports, news, children's, and "all other" increased by 16.3%, 25.8%, 24.6% and 19.9%, respectively, between 1996 and 1997. The results show, therefore, that between 1996 and 1997 sports programming had the lowest rate of increase in aggregate expenditures of the four subcategories of programming.

17. One MSO pointed out that although "sports programming costs get the headlines, huge increases in expenditures by cable programming networks are the rule."[40] The MSO states that cable programming network expenditures to produce basic cable programming increased eight-fold, from $482 million to $4 billion, from 1986 to 1998.[41]

18. Summit states that small operators lack the market power to negotiate favorable programming rates and cannot obtain volume discounts. Summit alleges that some programmers refuse to negotiate with the National Cable Television Cooperative, which purchases programming on behalf of its small-operator members. As a result, according to Summit, small operators have little control over their programming costs.

2. Programming costs as a factor contributing to recent rate increases

19. In their public statements, operators have identified programming costs, and the costs of sports programming in particular, as one of the major reasons for recent rate increases. In addition, at least one industry study has concluded that sports and entertainment programming costs have escalated subsequent to the period under review at a rate that far exceeds the general rate of inflation.[42] In the case of sports programming, news accounts within the past year of bidding wars and unprecedented fees for sports broadcast rights lend credence to the proposition that sports programming costs are indeed escalating rapidly.[43] These more recent cost increases are not reflected in the Inquiry responses.

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[39]For purposes of this report, the term "general entertainment programming" means all programming except sports, news, and children's programming.

[40]The MSO cites "Basic Nets: Quality Costs Money," *Multichannel News*, June 8, 1998, pp. 3, 18.

[41]*Id.*

[42]Kagan Media Appraisals, Inc., *TV Programming Costs: An Analysis of the Market Forces Driving Entertainment and Sports Rights Fees* (Dec. 1997) ("Kagan Study"). The Kagan Study attributes this trend to increases in sports player salaries, the distribution fees charged by sports leagues and team owners, entertainment production costs, and licensing fees for movies and off-network syndicated programming.

[43]*See, e.g.*, Michael Hiestand, "The NFL's $17.6 Billion Payday; Broadcasters See Football as Necessary to Survival," USA TODAY, Jan. 14, 1998, at 1A; Leslie Cauley, "ESPN's New Football Deal Is Expected To Boost Rates for Cable TV Next Year," WALL ST. J., Jan. 16, 1998, at B6.

TABLE D-5
MSO Ownership in National Programming,
MSOs Ranked in Order of Number of Subscribers

Services	Subs. (Mil.)	TCI	Time Warner	Media One	Comcast	Cox	Cable-vision Systems	Jones Cable
Action Pay-Per-View	8.0	35%						
AMC	68.0						75%	
Animal Planet	40.7	49%				24.6%		
BBC America	*	24.6%				12.3%		
BET	54.2	35%						
BET on Jazz	3.5	35%						
BET Movies	3.5	81%						
The Box Worldwide	26.8	78%						
Bravo	35.0						75%	
Canales ñ	*	100%						
Cartoon Network	51.3		100%					
CBS Eye on People	11.0	24.6%				12.3%		
Cinemax	32.0		100%					
Cinemax2	(1)		100%					
CNN	73.7		100%					
CNNfn	2.4		100%					
CNN Headline News	68.6		100%					
CNN International	2.8		100%					
CNN/SI	.6		100%					

19.4%), \$0.08 (or 11.9%), \$0.03 (or 4.5%), and \$0.43 (or 64.2%), respectively, to the subcategories of sports, news, children's, and "all other" programming. Table 2 and Chart 3 show this breakdown for the year ending July 1, 1997.

23. Applying these amounts to the total increase in rates between July 1, 1996, and July 1, 1997, we found that the increase in aggregate expenditures for sports programming license fees accounted for 5.3% of the total increase in rates over that period (\$0.13 divided by \$2.45 equals 5.3%). On the same basis, increases in expenditures for news and children's programming[50] accounted for 1.2% and 3.2%, respectively, of the total increase in rates for that period. The "all other," or general entertainment, category accounted for 17.6% of the total increase in rates.[51]

24. On average, for the year ending July 1, 1997, the Inquiry participants reported that 10.4% of the total increase in license fees was attributable to affiliated programming. These same MSOs reported that, for the same period, affiliated programming networks accounted for 12% of all programming networks[52] on their regulated tiers. Increases from unaffiliated programmers accounted for the remaining 89.6% of the total increase in license fees, while unaffiliated programming networks accounted for 88% of all programming networks carried. The four MSOs responding to this question included a mix of operators with widely varying degrees of affiliation. For the year ending July 1, 1997, for example, the most vertically integrated operator reported that approximately 23% of its average regulated channels provided programming from affiliated programmers. This operator also attributed approximately 29% of its programming cost increases to affiliated programmers for the same time period. The least vertically integrated operator, by contrast, reported that approximately 4% of its average regulated channels provided programming from affiliated programmers. For the same time period, that operator attributed approximately 4% of its programming cost increases to affiliated programmers.

B. Channel additions

25. The Commission's channel addition rules allow operators to recover programming costs and other costs incurred when operators add channels to their systems. Until December 31, 1997, operators were permitted to increase their rates using either of two methods to account for the addition of channels to CPSTs and single-tier systems after May 15, 1994. The two methods of rate adjustment were the per-channel adjustment factor and the Operator's Cap.[53] Neither method is currently available

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[50]One MSO notes that reported increases in the cost of children's programming are partially due to the migration of the Disney Channel from unregulated premium status to a regulated tier.

[51]Of the 28.2%, the amount of average monthly rate change attributed to programming cost increases, the sum of the four subcategories account for 27.3%. The remaining 0.9% is attributable to non-license fee programming cost increases.

[52]The term "all programming networks" refers to all channels on regulated tiers including broadcast and PEG channels as well as satellite channels.

[53]The Commission modified its initial rules to allow operators to increase their rates by a per-channel adjustment factor to reflect the addition of new channels and to add a 7.5% markup to recoverable programming costs. (*Second Order on Reconsideration*, 9 FCC Rcd at 4139.) Under the Operator's Cap method, which was adopted in a later modification to the rules, operators were permitted to increase their monthly CPST rates during calendar years 1995

(continued...)

Programming Service	Expected Launch Date
Genesis Network	Not Announced
GETv Network	Not Announced
Global Village Network	Not Announced
Hobby Craft Communications	2nd Qtr. 1999
Home Improvement TV Network	Not Announced
Jim Henson Network	Not Announced
Locomotion	4th Qtr. 1998
M1	Not Announced
Martial Arts Action Network	1999
MBC Movie Network	Not Announced
Men's Entertainment Network (MEN)	3rd Qtr. 1999
Museum Channel	Not Announced
Native American Nations Program Network	Not Announced
Nickelodeon Game & Sports	January 1999
Nick Too	January 1999
Noggin	January 1999
Orb TV	Not Announced
Outlet Mall Network	Not Announced
Oxygen	January 2000
Parents Channel	Not Announced
Performance Showcase	Not Announced
Planet Central Television	Not Announced
Premiere Horse Network	Not Announced
Puppy Channel	Not Announced
RadioTV Network	Mid-1999

28. The 1997 Price Survey indicated that 11% of rate increases during the 12-month period ending July 1, 1997, were attributable to infrastructure upgrades.[60] The Inquiry found that upgrades, in general, comprised a higher proportion -- 18% -- of average monthly rate increases than the proportion indicated by the Price Survey for the same period.[61] MSOs with social contracts reported substantial upgrades pursuant to their social contracts with the Commission. One such MSO adds, however, that its upgrade costs have substantially exceeded its upgrade-related rate increases. Three MSOs reported that although they have completed system upgrades and, in some cases, have expended considerable sums to do so, they have not sought to recover their upgrade costs in regulated subscriber rates. One MSO states that it has used borrowed funds as well as revenues from advertising and other non-regulated sources to finance over $3.5 billion in upgrades. Another MSO states that, in addition to rates for regulated services, it has drawn on advertising revenues, home shopping commissions, and launch and marketing fees to finance its upgrades.

D. Revenues

29. Operators earn revenues not only on regulated subscriber services but also from unregulated subscriber services (such as premium and pay-per-view channels) and non-subscriber sources, such as launch fees and sales commissions paid by programmers and from local advertising. The 1992 Cable Act required the Commission to evaluate a number of factors when it established regulations to ensure that cable television rates are reasonable. Among other things, the Act required the Commission to consider "the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned."[62]

30. Operators that increase their rates to recover increased programming costs must adjust their permitted rates, on a channel-by-channel basis, to account for any revenues received from programmers, such as sales commissions.[63] Offsetting is designed to permit operators to recover only their net programming costs.[64] The Commission determined that off-setting "best balances the interest of the cable operator in being compensated for adding new programming and the interest of subscribers in receiving reasonable rates."[65] Under the channel-by-channel offsetting method, operators are not required to use revenues derived from programming on one channel to offset the costs of programming carried on another

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[60] *Price Survey Report*, 12 FCC Rcd at 22766.

[61] An explanation for the higher proportion attributable to system upgrades found in the Inquiry in comparison with the Price Survey is that the four MSOs who provided consistent information include a higher proportion of operators with social contracts (two out of four) than the Price Survey sample. For all six MSOs responding to the Inquiry, 9.9% of the total change in average monthly rates was attributable to system upgrades.

[62] Communications Act § 623(c)(2)(F), 47 U.S.C. § 543(c)(2)(F).

[63] 47 C.F.R. § 76.922(f)(7); *see* Letter dated May 6, 1994, from Alexandra M. Wilson, Acting Chief, Cable Services Bureau, to Sue D. Blumenfeld and Philip L. Verveer, QVC Network, Inc., 75 Rad. Reg. 2d (P & F) 292 (1994).

[64] *Rate Order*, 8 FCC Rcd at 5789 n.602.

[65] *Sixth Order on Reconsideration*, 10 FCC Rcd at 1252.

Programming Service	Launch Date	MSO Ownerhsip (%)
Newschannel 8	Oct-91	
Nippon Golden Network	Jan-82	
NorthWest Cable News	Dec-95	
Orange County NewsChannel	Sep-90	
PASS Sports (Pro-Am Sports System)	Apr-84	
Pennsylvania Cable Network (PCN)	Sep-79	
Pittsburgh Cable News Channel (PCNC)	Jan-94	
PRISM	Sep-76	
Six News Now	Jul-95	
South Florida Newschannel	1998	
SportsChannel Florida	Dec-87	TCI (6), Cablevisoin (13.5)
SportsChannel New York	1976	
Sunshine Network	Mar-88	TCI (27), MediaOne (7.5), Comcast (16), Cox (5.3)

Sources:
National Cable Television Assoc, *Regional Video Services*, Cable Television Developments, Spring 1998, at 98-116. Liberty Media Press Release, *Cablevision's Rainbow Media and Fox/Liberty Complete Transaction to Create Sports Partnership*. Dec. 18, 1997, at 1. R. Thomas Umstead, *ESPN Lands $600M NHL Deal*, Multichannel News, Aug. 31, 1998, at 10. R. Thomas Umstead, *Ops Eye Low-Cost Local Heroes*, Multichannel News, May 4, 1998, at 74. See also Table D-1 Sources.

2. Launch Fees

34. Launch fees are paid by a programmer to an operator, usually on a per-subscriber basis, as an incentive for the operator to add the programmer's service. Operators that had used the Operator's Cap method for channel additions were required to use launch fee revenues received from any programmer first to offset the permitted per-channel Operator's Cap rate increase for that programming service. Any remaining launch fee revenues were then required to be used to offset programming costs.[70] The Bureau determined that no offsetting was required if the payment was used to cover "verifiable and reasonable promotional expenses" incurred by an operator to market the new programming.[71] The Bureau later clarified that the channel-by-channel standard for offsetting would be applied on a programmer-specific basis where a single cable channel is shared by different programming services.[72]

35. Only two Inquiry participants provided information on revenues from launch fees, and for those two MSOs launch fees amounted to a tiny fraction of total regulated revenues. One MSO reported that launch fees are an unreliable source of revenue, and that this source of revenue may disappear in the future as more channel capacity becomes available with the introduction of digital capability.

3. Sales Commissions

36. Sales commissions are revenues from programming, such as home shopping channels, that programmers pay cable operators in exchange for carriage. Operators must use sales commission revenues to offset, on a channel-by-channel basis, the cost of the programming from which such revenues are derived.[73] As a practical matter, the rate benefit derived from such offsets, if any, is minimal, because home shopping programmers typically do not charge operators license fees to carry their programming.[74]

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[70] 47 C.F.R. § 76.922(g)(3)(ii).

[71] Letter dated May 19, 1994, from Kathleen M. Wallman, Acting Chief, Cable Services Bureau, to Frederick Kuperberg, Senior Vice-President, The Disney Channel, 9 FCC Rcd 7762 (1994). The Bureau stated: "As long as, in individual cases, the reimbursements are part of a reasonable marketing plan and it does not appear that the operator and the programmer have significantly altered reimbursement practices primarily in order to avoid offsetting, we will not require application of" the offset rule. *Id.* at 7763-64.

[72] Letter dated December 19, 1994, from Meredith J. Jones, Chief, Cable Services Bureau, to Maurita K. Coley, Senior Vice President, Legal Affairs, Black Entertainment Television, Inc., 10 FCC Rcd 685 (1994). Operators seeking to recover the costs of programming added to a shared channel must obtain Commission permission to do so without off-setting the revenues against the programming costs. *Id.* at 686 n.6.

[73] Home shopping network operators initially were required to offset the 20 cent per-channel Operator's Cap mark-up with sales commission revenues received from such channels. *Rate Regulation*, MM Docket Nos. 92-266 & 93-215, Twelfth Order on Reconsideration, 11 FCC Rcd 785, 789 (1995). The Commission later eliminated this requirement because of administrative and practical difficulties, stating that "the revenues derived from sales commissions can vary with each reporting period which renders difficult the incorporation of these fluctuations into the ratemaking process." *Id.* at 790.

[74] *Id.* at 789.

TABLE D-3
Regional Video Programming Services

Programming Service	Launch Date	MSO Ownerhsip (%)
Arabic Channel	Apr-91	
Automotive Television Network (ATN)	Sep-95	
BAYTV	Jul-94	TCI (49)
Cable TV Network of New Jersey	Jul-93	
California Channel	Feb-91	
Casa Club TV	Jul-97	
ChicagoLand Television News (CLTV)	Jan-93	
CN8 - The Comcast Network	1996	Comcast (100)
Comcast SportsNet	Oct-97	Comcast (46)
County Telvision Network San Diego	Jul-96	
Ecumenical Television Channel	1983	
Empire Sports Network	Dec-90	
Florida's News Channel	Sep-98	
Fox Sports Arizona	Sep-96	TCI (50)
Fox Sports Bay Area	Apr-90	TCI (35)
Fox Sports Chicago	Jan-84	TCI (35), Cablevision (45)
Fox Sports Cincinnati	1989	TCI (20), Cablevision (45)
Fox Sports Detroit	Sep-97	TCI (50)
Fox Sports Intermountain West	1990	TCI (50)
Fox Sports Midwest	1989	TCI (50)
Fox Sports New England	Nov-81	TCI (10), Cablevision (22.5), MediaOne (50)
Fox Sports New York	1982	TCI (18), Cablevision (41.5)

by-tier basis. The Commission also could have limited programming cost and/or other external cost pass-throughs by other means. For example, the 7.5% markup on programming costs could have been eliminated. Alternatively, or in addition, external costs could have been capped, perhaps at the level of inflation, with or without an additional allowance for profit. Adoption of this type of cap on programming cost pass-throughs could have prompted operators to use advertising revenues to pay for a portion of programming costs, but would not have required operators or regulators to account for advertising costs and revenues on a channel-by-channel or tier-by-tier basis. The Commission previously considered such a cap on external cost pass-throughs, but declined to adopt it out of a concern for the continued growth of programming.[78]

C. Effect of Affiliation on Programming Costs

42. Information provided by the Inquiry participants did not permit an in depth analysis of the effects of affiliation on programming costs and subscriber rates. Our rules require that license fees charged by programmers to their affiliated operators must reflect either the same rates as those charged to unaffiliated operators or the fair market value of the programming.[79] Data from the Inquiry show that, on average, the ratios of affiliated programming networks to all programming networks (12%), and expenditures on affiliated programming to total programming expenditures (10.4%), are roughly similar. Without examining programmers' costs and pricing practices, which was beyond the scope of this Inquiry, it is impossible to evaluate the effects of affiliation on rates. Nevertheless, the data that we did collect do not suggest that cable operators' programming costs are either systematically higher or systematically lower for affiliated channels than for unaffiliated channels.

D. Revenues

43. Under the Commission's rules, advertising revenues are accounted for in rates only through the cost-of-service rate method, which is used infrequently. Advertising revenues earned by Inquiry participants, other operators, and programmers have grown steadily in recent years. The Inquiry indicates that advertising revenues are not a major source of revenue for operators at this time, since they are equal to about 8% of regulated revenues as of June 30, 1997.[80] Revenues from sales commissions and launch fees appear to be relatively insignificant compared to overall revenues, and there appears to have been little or no growth in these revenues in recent years.

V. Conclusion

44. While rate increases for the most part have been accompanied by upgrades in system infrastructure, rate increases consistently several times the rate of inflation have engendered numerous critics of the rate-setting policies of cable operators and of the Commission's rate regulations permitting

[78] *Rate Order*, 8 FCC Rcd at 5788.

[79] 47 C.F.R. 76.922(f)(6). This provision suggests that, for a given program service, charges to affiliated and unaffiliated operators should not differ based solely on affiliation status.

[80] It should be noted, however, that average advertising revenues represent a significantly higher percentage when compared with average expenditures for programming on regulated services (35.2%) than when compared with average regulated revenues (8%).

Programming Service	Launch Date
Nickelodeon/Nick at Nite	Apr-79
Nick at Nite's TV Land	Apr-96
Oasis TV	Sept-97
Outdoor Channel	Apr-93
Planet Central Television	May-95
Playboy TV	Nov-82
Praise Television	Dec-96
Recovery Network	Feb-97
SCOLA	Aug-87
Shop at Home	Jun-86
Showtime	Jul-76
SingleVision	Jun-94
Soap Channel	Jul-98
Spice	May-89
Spice Hot	1998
Student Film Network	Nov-94
Sun TV	Aug-96
Sundance Channel	Feb-96
Telemundo	Jan-87
TNN: The Nashville Network	Mar-83
Toon Disney	Apr-98
Total Communications Network	Nov-95
Trinity Broadcasting Network	Apr-78
TRIO	Sep-94
Tropical Television Network	Aug-96
TV 5 - La Television Internationale	Jan-98

Table F1

PROGRAMMING COST INQUIRY: SUMMARY OF RESULTS REVENUES AND PROGRAMMING EXPENDITURES FOR REGULATED SERVICES Based on Averages of Four Large MSOs*	1996 ($ in millions)	1997 ($ in millions)	Percent Change
Revenues:			
Average Regulated Revenue	**$1,774.5**	**$2,022.8**	**14.0%**
Average Advertising Revenue	$130.6	$168.4	28.9%
Average Sales Commissions	$18.2	$19.8	8.8%
Average Advertising Revenue as a Percent of Average Regulated Revenue	7.4%	8.3%	
Average Commissions as a Percent of Average Regulated Revenue	1.1%	1.0%	
Programming Expenditures:			
Average Programming Expenditures for All Regulated Services	**$397.8**	**$478.1**	**20.2%**
Average Expnditure for Each Subcategory of Programming:			
Sports	$109.7	$127.6	16.3%
News	$42.4	$53.3	25.8%
Children's	$44.2	$55.1	24.6%
"All Other"	$201.9	$242.1	19.9%
Each Subcategory of Programming as a Percentage of Programming Expenditures			
Sports	27.6%	26.7%	
News	10.7%	11.2%	
Children's	11.1%	11.5%	
"All Other"	50.8%	50.6%	
Average Programming Expenditures as a Percentage of Average Regulated Revenue	**22.4%**	**23.6%**	

* Six MSOs responded to the Inquiry; four provided consistent data across a majority of questions.

Programming Service	Launch Date
CMT (Country Music Television)	Mar-83
CNBC	Apr-89
Consumer Resource Network	Dec-94
Crime Channel	Jul-93
Deep Dish TV	Jan-86
Disney Channel	Apr-83
Do-it-Yourself	Jan-98
Dream TV Network	Nov-96
Ecology Channel	Nov-94
Employment Channel	Feb-92
The Erotic Network (TEN)	Aug-98
ESPN	Sep-79
ESPN2	Oct-93
ESPN Classic Sports (formerly Classic Sports Network)	May-95
ESPNEWS	Nov-96
Ethnic-American Broadcasting Co.	1992
EWTN: Global Catholic Network	Aug-81
Fashion Network	Jul-96
Filipino Channel	Apr-91
Flix	Aug-92
Fox Family Channel (formerly The Family Channel)	Apr-77
Foxnet	Jul-91
Fox News Channel	Oct-96
FXM: Movies from Fox	Oct-94
Galavision	Oct-79
Game Show Network	Dec-94
Gay Entertainment Television	Nov 95

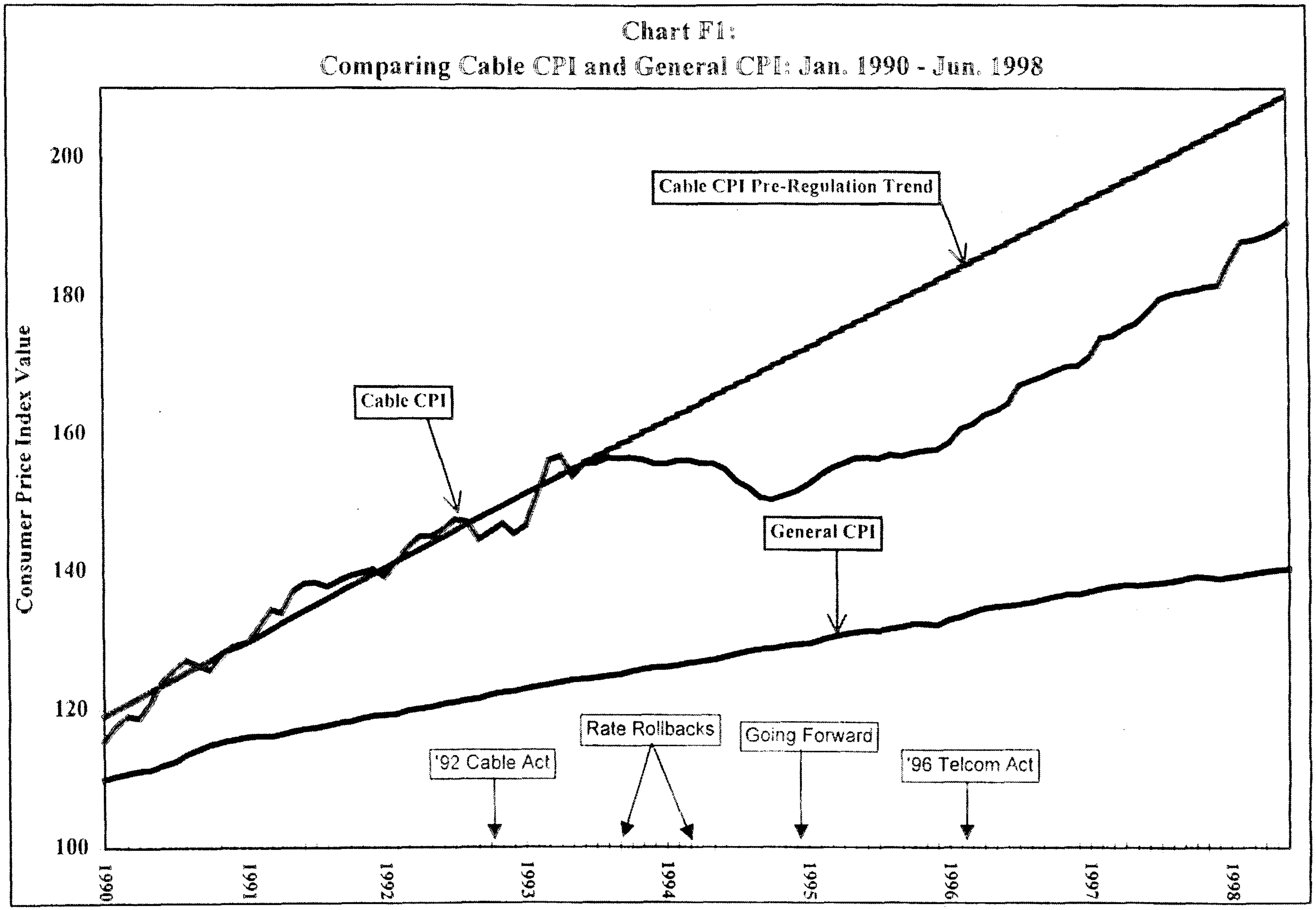
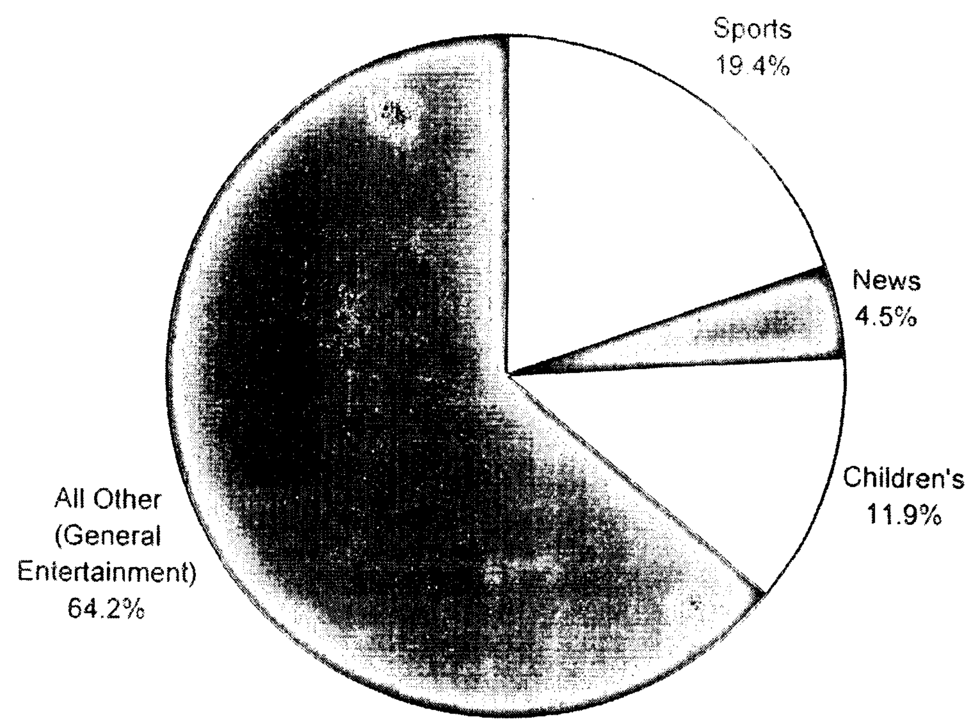


Chart F1:
Comparing Cable CPI and General CPI: Jan. 1990 - Jun. 1998
Consumer Price Index Value
200
180
160
140
120
100
Cable CPI Pre-Regulation Trend
Cable CPI
General CPI
Rate Rollbacks
Going Forward
'92 Cable Act
'96 Telcom Act
1990
1991
1992
1993
1994
1995
1996
1997
1998

website http://www.tci.com/libertymedia.com/liberty.pgs/libertyfinancial.html on Aug. 21, 1998. Eben Shapiro and John Lippman, *Murdoch Sells TV Guide to an Affiliate of TCI*, Wall Street Journal, Jun. 12, 1998, at B1. Time Warner, Inc., 1997 Annual Report. Donaldson, Lufkin & Jenrette, Equity and Research: Broadcasting and Cable, Table 15: U S West Media Group · Valuation of Non-Consolidated/Non-Domestic Cable Investors, March 10, 1998, at 35. U S West, Inc., Form 10-K/A for the fiscal year ended Dec. 31, 1997. Comcast Corp., Form 10-K for the fiscal year ended Dec. 31, 1997. *Comcast Content*, at http://www.comcast.com/content/qvc.htm on Aug. 21, 1998. *Comcast Other Investments*, at http://www.comcast.com/other/index.htm on Aug. 21, 1998. *Cox Strategtic Investments*, at http://www.cox.com/financials/investments.html on Aug. 21, 1998. Cablevisions System Corp., Form 10-K for the fiscal year ended Dec. 31, 1997. Adelphia Communications Corp., Form 10-K/A for the fiscal year ended Dec. 31, 1997. Jones Growth Partners II, L.P., Form 10-K for the fiscal year ended Dec. 31, 1997.

Chart F3:
Breakdown of Licensing Fee Increases by Type of Programming
For Four MSOs for the Year Ending July 1, 1997



Programming Service	Launch Date	MSO Ownership (%)
HBO (Home Box Office)	Nov-72	Time Warner (100)
HBO 2	Dec-75	Time Warner (100)
HBO 3	Oct-93	Time Warner (100)
HBO Family	Dec-96	Time Warner (100)
Home Shopping Network	Jul-85	TCI (18.6), MediaOne (<1)
Home Shopping (Spree!)	Sep-86	TCI (18.6), MediaOne (<1)
Independent Film Channel	Sep-94	Cablevision (75)
International Channel	Jul-90	TCI (90)
Kaleidoscope	Sep-90	TCI (12)
Knowledge TV (formerly Mind Extension University)	Nov-87	Jones (97)
MoreMAX (formerly Cinemax2)	Aug-91	Time Warner (100)
MuchMusic USA	Jul-94	Cablevision (75)
Odyssey Channel	Oct-93	TCI (32.5)
Outdoor Life Network	Jul-95	Cox (33.3), TCI (16.7), Comcast (8.3), MediaOne (8.3)
Ovation: The Arts Network	Apr-96	Time Warner (4.2)
Prevue Channel	Jan-88	TCI (44)
PIN (Product Information Network)	Apr-94	Cox (45)
QVC	Nov-86	Comcast (57), TCI (43)
Romance Classics	Jan-97	Cablevision (75)
Sci-Fi Channel	Sept-92	TCI (18.6), MediaOne (<1)
Sneak Prevue	May-91	TCI (12)
Speedvision	Dec-95	Cox (33.3), TCI (16.7), Comcast (8.3), MediaOne (8.3)

Statement of Chairman William Kennard

Re: In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket 98-102

When Congress passed the Telecommunications Act of 1996, it affirmed the principle that when it comes to innovation and consumer choice, competition is preferable to regulation. Congress envisioned that the removal of market entry barriers would produce robust competition offering a wide array of viewing choices at reasonable prices to millions of American families across the nation. Our annual report shows that, although competition is increasing, the level of competition that consumers are seeking has not yet arrived.

Eighty-five percent of all households subscribing to multi-channel video service receive that service from their local cable operator (a two percent decline from the 87 percent we reported a year ago). With this high market share, it is not surprising that cable prices rose more than four times the rate of inflation between June 1997 and June 1998.

The drop in local cable operators' dominance of this market is primarily due to the continued growth of DBS systems, and to a lesser degree, the launch of new open video systems and instances where incumbent cable operators have faced head-to-head competition from other cable operators. These cases are immensely important for they teach us an important lesson. That lesson is that competition brings consumer benefits. And, as we continue to move towards a more competitive market, it is my hope that consumers will benefit from lower prices, improved customer service, and additional services.

Over the past year, the Commission has taken a number of steps to foster vigorous competition in this field. We improved our program access rules. We pre-empted rules and regulations that prohibited renters and residents in multiple-dwelling units from setting up satellite dishes and antennae in areas under their exclusive control. We ensured that consumers soon will be able to choose to purchase set top boxes from their local retailer instead of leasing their boxes from their cable operator. And we sought updated information on the state of horizontal concentration in the cable industry and how it affects competitiveness.

The Commission will continue to take aggressive actions to promote competition. I believe that we could do even more if we were given additional statutory tools. Congress has done much to promote competition in this marketplace, and I believe it would be beneficial for Congress to consider taking additional actions to promote competition. Specifically, I believe that Congress should continue to consider whether to amend the Satellite Home Viewer Act to allow DBS providers to carry local broadcast signals. In my view, it is difficult for DBS to develop as a head-to-head competitor to cable if DBS can't carry many of the channels at the heart of our TV experience. In other words, it's more than a little frustrating to be able to watch a football game a 1,000 miles away, but not be able to tune in to your local news to see if it is going to rain tomorrow. Many consumers have reported this type of frustration with DBS. I believe that removing this prohibition would help promote the further growth of DBS.

I would like to work with Congress as they evaluate other statutory proposals to promote competition. For example, the Commission's current impact on competition in MDUs is limited because our authority to allow use of the inside wiring by competitors extends only to circumstances where the incumbent video service provider no longer has a legal right to remain in the building. And, as I said only a month ago when we adopted new OTARD rules, I would like to open a dialogue with Congress regarding the possible extension of the OTARD provisions for renters and others who do not have

Appendix D

Table D-1
MSO Ownership in National Video Programming Services

Programming Service	Launch Date	MSO Ownership (%)
Action Pay-Per-View	Sept-90	TCI (35)
AMC (American Movie Classics)	Oct-84	Cablevision (75)
Animal Planet	Oct-96	TCI (49), Cox (24.6)
BBC America	Mar-98	TCI (24.6), Cox (12.3)
BET (Black Entertainment Television)	Jan-80	TCI (35)
BET on Jazz	Jan-96	TCI (35)
BET Movies	Feb-97	TCI (81)
The Box Worldwide	Dec-85	TCI (78)
Bravo	Feb-80	Cablevision (75)
Canales ñ (1) (Digital package of 8 video channels)	Aug-98	TCI (100)
Cartoon Network	Oct-92	Time Warner (100)
CBS Eye on People	Mar-97	TCI (24.6), Cox (12.3)
Cinemax	Aug-80	Time Warner (100)
CNN	Jun-80	Time Warner (100)
CNNfn (The Financial Network)	Dec-95	Time Warner (100)
CNN Headline News	Jan-82	Time Warner (100)
CNN International	Jan-95	Time Warner (100)
CNN/SI	Dec-96	Time Warner (100)
Comedy Central	Apr-91	Time Warner (50)
Court TV	Jul-91	TCI (50), Time Warner (50)

Separate Statement
of
Commissioner Ness

Re: In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Program

This, our fifth annual report on the status of competition in the market for the delivery of video programming, finds that competition to cable is slowly but steadily growing. The record evidences a consistent trend showing that more people each year perceive that they have more than one multichannel video provider ("MVPD") from which to choose.

As is often the case, readers can interpret the data in this comprehensive report in various ways. In my view, the data tell a positive story about the development of multichannel video competition, particularly from Direct Broadcast Satellite service ("DBS"). From July 1994 to June 1998, DBS subscribership has grown from 70,000 to 7.2 million, which, as of June 1998 represented 9.4% of all MVPD subscribers. In each of the last four years, DBS has experienced impressive growth. Indeed, Paul Kagan reports that 2.2 million of the 3.6 million net new MVPD subscribers in 1998 (or almost two-thirds) are choosing DBS.

Last year, our report identified at least three reasons why potential DBS subscribers declined to sign up: high installation costs, significant costs to hook up additional TV sets, and the lack of broadcast television service. Since last year, the cost of installation has plummeted, although it remains expensive to hook up additional sets. Notably, efforts have been made in the last year to address the legislative and technological prerequisites to enable DBS providers to offer local broadcast signals in their respective local markets. Whether it is 'local into local' or consumer education and assistance with installation of rooftop antennas, the key is cooperation between terrestrial broadcasters and DBS providers. Success on this front could make DBS an even better substitute to cable for many Americans.

The level of competition in the multichannel video market should not be measured solely by whether cable continues to lose market share. If cable operators use competitive responses to retain customers, so much the better. We should not fault the cable industry for beefing up its service quality, for example, in light of growing competition. Some of the data in this report show that the "pie" is getting slightly larger, as the number of total TV households grows and the numbers of multichannel video subscribers grows. For example, the total number of television homes increased from 97 million in 1996 to 98 million today. The total number of households subscribing to MVPDs increased 4.1% from 73.6 million in 1997 to 76.6 million in 1998. The number of cable subscribers also continued to grow, rising about 2% from 64.2 million in 1997 to 65.4 million in 1998. Some subscribers have chosen to retain basic cable for local service while adding DBS for its national programming and picture clarity. Thus, both the number of cable subscribers and non-cable subscribers have grown and may continue to grow.

While I am heartened by the progress made in the development of new competition to cable, some concerns remain. Local cable franchise areas served by a wireline competitor, while growing, are limited. The widespread entry by local exchange carriers (LECs) envisioned by the Congress has not yet developed. Not everyone has access to DBS (it is currently available only throughout the Continental United States), and even with our extension, last fall, of the over-the-air reception device accessibility

NOTES:

- * System swaps.
- ** The transaction prices are from Paul Kagan Assocs. The transaction price is dependent upon the terms of each transaction and may or may not include debt.
- *** The calculations of Price/Basic Subscriber are from Paul Kagan Assocs. These calculations are subject to rounding and reporting inconsistencies.
- (c) Indicates a "consummated transaction."

SOURCES:

Paul Kagan Associates, Inc., *Announced/Proposed Cable System Sales*, Cable TV Investor, Jul. 9, 1997, at 10; Aug. 22, 1997, at 8; Sept. 10, 1997, at 4; Oct. 9, 1997, at 14; Nov. 21, 1997, at 9; Dec. 29, 1997, at 11; Jan. 30, 1998, at 8; Feb. 24, 1998, at 8; Mar. 13, 1998, at 10; Apr. 14, 1998, at 11; May 26, 1998, at 5; Jun. 30, 1998, at 7; Aug. 10, 1998, at 10; Sept. 11, 1998, at 5. Communications Daily, Mass Media ,Nov. 2, 1998; Communications Daily, Mass Media .Nov. 3, 1998; TCI Press Releases: *TCIC and TCA Finalize Partnership*, Feb. 2, 1998, available at http://www.tci.com/tci.com/press/980202.html; *TCIC Completes Transaction with Multimedia to Exchange Cable Systems in Illinois, Indiana and Kansas*, Aug. 31, 1998, available at http://www.tci.com/tci.com/press/980831.html; *TCIC Completes Contribution of Overland Park, Kansas Cable System to TCIC/Time Warner Partnership*, Aug. 31, 1998, available at http://www.tci.com/tci.com/press/980831a.html.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL POWELL

Re: *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102*

Today we transmit the Fifth Annual Report of the FCC to Congress regarding the state of competition in video programming. I wish to offer my view on how to interpret some of the most noteworthy facts contained within this report.

First, a word about concentration in the multi-channel video market. I take issue with some of the analysis in this report designed to quantify the extent of concentration in this market. I am not convinced that the product markets are properly defined and I question the value of hypothetical concentration analysis to produce an HHI index. But it really does not matter. By any measure, cable commands the lion's share of the multi-channel video market, though that share continues to steadily decline. Indeed, having started from a position of near total monopoly, it would be surprising if it did not control a large market share only three years since the passage of the 1996 Act. What must be understood is that market share alone does not support the conclusion that a given cable operator is exercising market power to the detriment of consumers.

As antitrust scholars well know, monopoly (or near monopoly) is not per se illegal, nor does the presence of a monopolist necessarily mean that there are anti-competitive effects flowing from its dominant position. A multitude of competitive alternatives certainly is always preferred, but the existence of only a few is not sufficient to pronounce anti-competitive harms to consumers. What must be examined is (1) the ability of the monopolist to raise prices substantially in excess of marginal costs, (2) whether a monopolist can restrict output, and (3) whether the lack of competition results in a lack of innovation. When one examines the state of the cable industry, I do not believe one can fairly conclude that consumers are suffering from cable's dominant position.

Price Increases: Many of cable's critics quickly point to the increases in cable prices as evidence that there is a lack of competition. Perhaps, but one cannot proclaim that prices are increasing faster than the consumer price index and rest the case. Price increases, of course, are not anti-competitive unless they substantially exceed the private firm's costs. If price increases are largely a consequence of increases in cost, it is incorrect to cite price increases as evidence of competitive harm. In the case of video programming, it is indisputable that programming licensing fees MSO's must pay have increased dramatically (18.4% last year) as have programming costs (20.9% last year). This report squarely acknowledges these facts. Moreover, it is not monopolistic behavior to increase prices to upgrade infrastructure and facilities that will ultimately benefit consumers in the market. In this report, we find that capital expenditures to upgrade cable facilities were up 21% last year. It is particularly dubious to cite price increases to demonstrate lack of competitive discipline when prices have been regulated.

Undoubtedly, in areas where there is direct competition to cable, the prices have been lower than non-competitive systems, but not by that much. In 1997, the price difference between competitive and non-competitive systems was $1.57, down from $1.69 the previous year. In short, most competitors are entering the market at similar price points.

YEAR	BUYER	SELLER	SYSTEMS	PRICE** (Mil.)	SUBS (Actual)	PRICE/ SUB ***	CASH FLOW MULT
Mar-98	Classic Comm	CableOne	TX, OK, KS, MO	$44	29,000	$1,523	8.3
Mar-98	Frontiervision	N.Oakland	Sumpter MI	$14	8,000	$1,743	7.7
Mar-98	Frontiervision	TCI	Port Clinton OH	$10	7,000	$1,429	6.6
Mar-98	CND Acquisition	King Kable	Andrews NC	$2	2,000	$750	6.9
Mar-98	Upsala Coop.	Midcontinent	Grey Eagle MN	$.5	500	$1,000	8.1
Mar-98	Galaxy Cablevision	USA Cablevision	Brooks/Colquitt Cts. GA	$.1	500	$313	2.8
Apr-98	Vulcan Ventures	Marcus	TX	$2,775	1,100,000	$2,523	11.1
Apr-98	Jones Intercable	Jones	Palmdale CA	$138	64,000	$2,176	10.4
Apr-98 (c)	Time Warner*	Cablevision*	Rensselaer NY	$57	30,000	$1,944	9.2
Apr-98 (c)	Cablevision*	Time Warner*	Litchfield CT	$49	27,000	$1,835	9.2
Apr-98	CableOne	Bresnan Comm	Grenada MS	$11	7,000	$1,564	7.3
Apr-98	Jones InterCable	Jones	Littlerock CA	$11	6,000	$1,881	8.8
Apr-98	TCI	Jones Fund	Chicago IL	$597	255,000	$2,340	9.8
Apr-98	TCI/Cox JV	TCI	Tulsa OK	$285	150,000	$1,902	8.2
Apr-98	TCI/Cox JV	Cox Comm.	Oklahoma City OK	$285	120,000	$2,378	11.6
Apr-98	Triax	Marcus Cable	Ottawa IL	$66	33,000	$2,018	9.0
Apr-98	Vista Comm	Smyrna Cable TV	Smyrna GA	$62	27,000	$2,351	9.2
Apr-98	TW Fanch	TCI	MD, OH, VA, WV	$274	148,000	$1,858	9.2
May-98	Cox Comm	Community Cable	Las Vegas NV	$1,137	319,000	$3,564	13.0
May-98	Millennium	InterMedia Partners	Arundel MD	$130	54,000	$2,399	9.3
May-98	Amer Cable Ent	Booth American	Victorville CA	$74	32,000	$2,300	9.3
May-98	N. Willamette	Northland Comm	Woodburn OR	$7	4,000	$1,605	6.5
May-98	Cox Comm	TW-Douglas Cable	Omaha NE	$6	5,000	$1,224	7.9
May-98	Jones	Bresnan	GA	$50	24,000	$2,114	8.8
Jun-98	Savage Comm.	Midcontinent	East Gull Lake MN	$1.1	1,000	$1,100	8.7

Overall, I believe that the factual story this report tells is a positive one. The report indicates that there are promising trends in the video programming industry. Despite some entry barriers, we continue to see forays by telephone companies and other utilities, satellite companies and wireless providers into this market. Investment in this arena is strong. I believe this is so not just because the video business is a good one, but also because of the promise of the coming broadband market. Broadband offers the potential for new revenue streams for MVPD providers and, in turn, will provide consumers with new products and new choices. We should be careful not to take actions that would threaten further growth.

YEAR	BUYER	SELLER	SYSTEMS	PRICE** (Mil.)	SUBS (Actual)	PRICE/ SUB ***	CASH FLOW MULT
Sept-97	Time Warner*	TCI*	NY	$80	62,000	$1,290	6.2
Sept-97 (c)	KC Cable	TCI	Overland KS	$258	93,000	$2,777	12.3
Sept-97	TCI*	Time Warner*	PA, WY, MO	$80	55,000	$1,455	8.1
Sept-97	TCI*	Time Warner*	Portland OR	$270	126,000	$2,143	10.2
Sept-97	TCI*	Time Warner*	TX	$203	117,000	$1,735	8.7
Sept-97	Time Warner*	TCI*	TX	$203	126,000	$1,607	8.2
Sept-97	TCI/TW JV	TCI	TX	$1,326	520,000	$2,550	9.1
Sept-97	TCI/TW JV	TW	TX	$1,176	510,000	$2,306	12.5
Sept-97	Prime Cable	SBC Corp	VA, MD	$637	268,000	$2,377	8.2
Oct-97	Helicon Corp	Booth Comm	Anderson SC	$31	16,000	$1,934	9.6
Oct-97	Harron Comm	Auburn Cable	Auburn NY	$28	14,000	$1,958	10.2
Oct-97	Helicon Corp	Booth Comm	Boone NC	$35	19,000	$1,852	9.5
Oct-97	Comcast	Jones Fund 14	Broward FL	$140	55,000	$2,545	10.3
Oct-97	Helicon Corp	Calhoun TV	Calhoun TN	$1	1,000	$1,285	6.6
Oct-97	Optel	Phonoscope	Houston TX	$37	34,000	$1,074	8.8
Oct-97	TWE/AN	Time Warner	NY, FL, NC	$1,327	640,000	$2,073	9.4
Nov-97	CableOne*	Time Warner*	Anniston AL	$65	36,000	$1,814	9.5
Nov-97	Avalon Ptrs	Pegasus	CT, NH	$30	15,000	$1,954	9.0
Nov-97	Renaissance	Time Warner	Jackson , TN	$291	125,000	$2,328	9.8
Nov-97	Marcus Cable	McDonald Inv	Mountain Brook, AL	$62	23,000	$2,680	9.8
Nov-97	Fanch Comm	Spring Green	Spring Green , WI	$10	9,000	$1,051	7.3
Nov-97	CableOne	Jones Fund 14	Surfside SC	$52	25,000	$2,060	10.3
Dec-97 (c)	TCI*	Insight Comm*	Brigham UT	$125	58,000	$2,160	9.2
Dec-97 (c)	Insight Comm*	TCI*	Evansville IN	$131	63,000	$2,098	9.7
Dec-97	TCI*	MediaOne*	Chicago IL	$1,284	542,000	$2,368	10.6
Dec-97	Comcast	Marcus Cable	DE, MD	$66	27,000	$2,472	9.9
Dec-97	TCI*	Century Comm*	Fairfield CA	$191	90,000	$2,121	9.7

STATEMENT OF COMMISSIONER GLORIA TRISTANI

In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102

Debates about the status of cable competition often seem a rote exercise. One side asserts that competition has arrived and that market forces now can be relied upon to protect consumers; the other side claims that cable's dominant market power remains intact. One side argues that DBS has emerged as a substitutable, if not superior, video product to cable; the other side dismisses DBS as a high-end option. One side states that consumers are receiving more value (i.e., more and better programming services) for their money; the other side stresses the fact that rates continue to rise at more than four times the rate of inflation.

If few minds are ever changed during these debates, it may be because both sides are partly right. They are just focused on different consumers. Those who assert that competition has arrived are focused on a particular category of video consumers: those who want and can afford large programming packages. The cable industry has invested billions of dollars in capacity upgrades -- and plans to invest billions more -- in order to keep these consumers from defecting to DBS and, more importantly, to be able to exploit new revenue opportunitites like high-speed Internet access. As it happens, both reasons underlying cable's expanding capacity (i.e., increased channels and new services) are aimed at similar consumers, who tend to be younger and more well-off than the nation as a whole.[1] Although the cost of upgrades and new services may have caused rates to climb four times faster than the rate of inflation, these consumers may very well feel that the higher prices are justified by the increased value of the delivered product.

These consumers can look forward to even better times ahead. On the video side, if the up front costs of DBS continue to decline (and especially if DBS providers are able to provide local broadcast signals), an increasing number of consumers of large programming packages will find DBS and cable to be complete substitutes for each other.[2] On the data side, several entities, including telephone companies and wireless operators, are moving to enter the high-speed data business. It thus appears that these consumers can expect to have multiple service providers competing to serve both their video and data needs.

But there is another group of consumers who are not doing so well. These consumers do not want, cannot use or cannot afford large programming packages or high-speed data services. They are

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[1]*See Yankee Group Presentation -- Satellite TV: Research Overview*, April 15, 1998 (stating that average new DBS household income is 51% greater than average household, and that average new DBS subscriber is 50% more likely than average to be between age 18 and 34); *Falling Through The Net II: New Data on the Digital Divide*, NTIA Study July 1998 (finding that 49.2% of U.S. households with income above $75,000 had an online service, compared to only 9% of U.S. households with income between $20,000-24,999, and that only 8.8% of households over 55 years old had an online service, compared to 18.6% of the population as a whole).

[2]The major exception remains the 28% of American households in multiple dwelling unit buildings. Although the Commission has interpreted Section 207 of the 1996 Telecommunications Act to the limit of our stautory authority, an MDU resident can still be denied the right to install and use a DBS dish unless he or she has a balcony or other outdoor exclusive use area on which a dish can be placed and that faces the right direction to "see" the satellite.

TABLE C-3
1998 MVPD Horizontal Concentration Nationwide[1]

Rank	Company	Per Cent of Subscribers[2]
1	TCI	26.48
2	Time Warner	16.04
3	MediaOne	6.32
4	Comcast	5.79
Top 4		***54.63***
5	DirecTV	4.60
6	Cox	4.24
7	Adelphia	2.60
8	Century	1.72
9	Charter	1.62
10	Marcus	1.62
Top 10		***71.04***
Top 25		***80.99***
Top 50		***86.08***
	HHI	**1096**[3]

[1]MSO subscriber totals as of May 1998, and reported in *Top 100 Cable System Operators as of May1998*, Cable TV Investor, (Sept. 11, 1998), pp. 7-8. There is no double counting of subscribers. If a cable operator or DBS provider is partially owned by more than one MSO, it is assigned to the largest MSO. Subscribers for DirecTV and Primestar based on *DTH Subscribers* (Chart), SkyREPORT, April 1998, at 2.

[2]The total number of MVPD subscribers used to calculate the HHI is 73,634,200 from Table C-1. Differences in totals reflect rounding.

[3]The HHI is calculated on the basis of market shares for the top 50 companies. Because all of the remaining MVPDs have very small shares of the market, an HHI calculation that included all cable system operators could only be slightly higher (no more than 2-3 points) than the given HHI.

Dissenting Statement of Commissioner Harold Furchtgott-Roth
Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102

For the reasons that follow, I must respectfully dissent from the 1998 "Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming."

I.

As an initial matter, I do not believe that the issuance of this Competition Report fulfills our duties under the Communications Act. Instead of examining the state of competition "in the market for the delivery of video programming," 47 USC section 628(g), as the statute prescribes, the Report artificially limits its analysis to the delivery of "*multichannel* video programming."[1] There are, of course, many forms of video programming that do not come bundled in channels but that are still part of the general video distribution market. Unfortunately, the Report does not take full account of these very real forces in its investigation of competition.

For instance, the report considers broadcast service only as a competitor to multichannel video programming distributors ("MVPDs") in advertising, programming acquisition, and programming production, *see supra* at paras. 95-101, but not as an independent delivery source of video programming. Yet the statutory definition of "video programming" specifically *includes* broadcast programming. *See* 47 USC section 602(20) (providing that "the term 'video programming' means programming provided by, or generally comparable to programming provided by, a television broadcast station"). In focusing primarily on what is a *submarket* of video programming -- the "multichannel" distribution market -- rather than the entire market, the report does not fully meet the requirements of the statute.

The language of the statute also makes clear that Congress considered the delivery of video programming to constitute a single "market," *see id.* section 628(g) (referring to "the market" for video programming delivery), not a conglomeration of "markets," as the very title of this Report suggests in speaking of "[m]arkets" for the delivery of video programming. We should, as a plain statutory matter, have considered the delivery of video programming a single market in this Report.

II.

In addition to the above-described statutory reasons to view the relevant market participants as more than just MVPDs, economic theory supports that conclusion.

A product market is not comprised of perfectly substitutable products. *Cf. supra* at para. 63 (discussing whether DBS "represents a substitute" for cable). Rather, "[a] product market is a group of goods or services whose availability and prices *discipline* one another." Crandall & Furchtgott-Roth, *Cable TV: Regulation or Competition?* at 26 (1996) (emphasis added). For its part, cable television

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[1]It is true that the general "purpose" provision of section 628 refers to "increasing competition and diversity in the multichannel video programming market." 47 USC section 628(a). That (hortatory) provision, however, is not the section pursuant to which we issue this Report. Section 628(g), the section specifically requiring this Report, contains the more directly relevant and thus trumping language.

(7) DBS subscribers: 1994 from Kent Gibbons, *DBS: We're Walking the Walk*, Multichannel News, Jan. 16, 1995, at 3, 52; 1995 from *DTH Subscribers*, SkyREPORT, Jan. 1997, at 8; 1996-1997 from *DTH Subscribers*, SkyREPORT, Nov. 1997, at 10; and 1998 from Minal J. Damani and Jennifer E. Sharpe, *U.S. DBS Marketplace: 1998*, The Strategis Group, Jul. 1998, at 6.

(8) OVS subscribers: 1996 from Bell Atlantic Comments at 5. The 1997 and 1998 subscribers were estimated by the FCC.

(9) VDT trial subscribers: 1994-95 from Section 214 Applications, ex parte letters and associated filings with the FCC.

In sum, because the Report slices the relevant product market too thin and thereby paints many actual competitors out of the picture, its conclusions about the state of competition are skewed *ab initio*. I thus cannot endorse those conclusions.

III.

The objective facts in the Report -- which, as opposed to the conclusions about competition, I have no quarrel with -- indicate that even in the multichannel-only product market cable today faces a significant amount of competition and that this competition is likely to grow.

The percentage of MVPD subscribers that purchase cable (85%) is not, in itself, cause for concern. This market share statistic provides no direct evidence of the availability, or lack thereof, of alternatives to cable, although it is often cited as such. On its face, it only tells us that many people have opted -- perhaps for reasons entirely apart from lack of choice -- for cable companies over other video distributors. The reasons that consumers choose certain video products over others are complicated, based on personal cost-benefit determinations, and cannot be adduced from this number.

In short, it simply does not follow from the fact that cable has a preponderance of MVPD customers that cable has an unlawful or inefficient hold on the market. The FCC should not be in the business of trying to drive down the percentage of MVPD subscribers who take cable. Instead, we should create an environment that allows alternative providers to meet market demand for these services by removing regulatory impediments like rate regulation.

The fact that cable price increases outpaced the general rate of inflation is not necessarily cause for concern either. The inflation rate measures the *average* increase in prices of consumer goods and services. Producers of goods and services in various industries of course face widely divergent circumstances in terms of production, labor, overhead costs, *etc.;* simply put, not all industries face average costs. Given that cable has invested heavily in systems upgrades, *see supra* at para. 9 (increase of 21% since 1996), that its programming and licensing costs have increased far faster than inflation, *see id.* (increase of 18.4% and 20.9%, respectively), and that cable is providing more video and non-video services to its customers than ever before, *see id.*, a 7.3% price increase, as compared to a national average of 1.7%, is not particularly strong evidence of anticompetitive behavior.

Cable subscribership increased last year. I believe that consumers are not irrational. If they felt that cable, at the price it was offered, did not provide a service that they believed was worth the cost, they would not pay for it. They would migrate to other sources of video programming -- including, most obviously, free over-the-air broadcast programming. But cable subscribership *grew* by almost 2 million since the end of 1996. *See id.* at para. 17; App. B, Table B-1.

This evidence casts substantial doubt upon the notion that cable is somehow "overpriced," given the presence of choices for other video programming services. Either the consumers who subscribed to cable last year did not know of the availability of these services at lower prices in 1996, or the value they placed on the increased quality in cable service outweighed the intervening price increases. I find the latter more plausible.

DBS is making dramatic gains, presenting mounting competition to cable. The Report blinks reality in suggesting that DBS is not having a real competitive effect in the multichannel video

Appendix C

Table C-1
Assessment of Competing Technologies (i)

Technology Used	Dec. 1994	Dec. 1995	Dec. 1996	Jun. 1997	Jun. 1998
(1) TV Households(ii)	95,400,000	95,900,000	97,000,000	97,000,000	98,000,000
Pct. Change	1.27%	0.52%	1.15%	0.00%	1.03%
(2) MVPD Households(iii)	63,936,620	68,487,750	72,370,950	73,646,970	76,634,200
Pct. Change	6.06%	7.12%	5.67%	1.76%	4.06%
Pct. of Households	*67.02%*	*71.42%*	*74.61%*	*75.92%*	*78.20%*
(3) Cable Subs.	59,700,000	62,100,000	63,500,000	64,150,000	65,400,000
Per Cent Change	4.37%	4.02%	2.25%	1.02%	1.95%
Pct. of MVPD Total	*93.37%*	*93.37%*	*87.74%*	*87.10%*	*85.34%*
(4) MMDS Subs.	600,000	851,000	1,180,000	1,100,000	1,000,000
Pct. Change	51.13%	41.83%	38.66%	-6.78%	-9.09%
Pct. of MVPD Total	*0.94%*	*1.24%*	*1.24%*	*1.49%*	*1.30%*
(5) SMATV Subs.	850,000	962,000	1,126,000	1,162,500	940,000
Pct. Change	-15.34%	13.18%	17.05%	3.24%	-19.14%
Pct. of MVPD Total	*1.33%*	*1.40%*	*1.56%*	*1.58%*	*1.23%*
(6) HSD Subs.	2,178,000	2,365,400	2,277,760	2,184,470	2,028,200
Pct. Change	35.11%	8.60%	-3.71%	-4.10%	-7.15%
Pct. of MVPD Total	*3.41%*	*3.45%*	*3.15%*	*2.97%*	*2.65%*
(7) DBS Subs.	602,000	2,200,000	4,285,000	5,047,000	7,200,000
Pct. Change	760.00%	265.45%	94.77%	17.78%	42.66%
Pct. of MVPD Total	*0.94%*	*3.21%*	*5.92%*	*6.85%*	*9.40%*
(8) OVS Subs.			2,190	3,000	66,000
Pct. Change				36.99%	2,100%
Pct. of MVPD Total			*0.0%*	*0.0%*	*0.09%*
(9) VDT Subs. (Trials) (iv)	6,620	9,350	0	0	0
Pct. Change		*41.24%*	-100.00%	0.00%	0.00%
Pct. of MVPD Total	*0.01%*	*0.01%*	*0.00%*	*0.00%*	*0.00%*

Almost two years ago, based in part on research conducted by economists Leland Johnson and Deborah Castleman, I concluded that "[o]nce the cost of receivers, including installation, falls to about $500, DBS should render traditional cable service contestable, assuming that it and cable deliver a similar array of services with equivalent reception quality." Crandall & Furchtgott-Roth at 92. Today, the cost of receivers and installation is *well* below $500; cable and DBS provide similar programming (even without local broadcast, which they now, in any event, facilitate with antennae sales, as described above); and DBS is considered by many to have not just similar but superior reception, as well as sound, quality. In my view, the day has already come when DBS creates a market disciplining and thus pro-competitive effect.

New entrants are on the scene. The Report chronicles well but, unfortunately, then downplays the many innovative providers now on, or waiting in the wings of, the video scene. For example, electric and gas utilities, either on their own or in partnership with others, are providing facilities-based video, telephony, and internet. *See supra* at paras. 120-121. So are local exchange carriers, who are doing overbuilds in many areas. *See id.* at paras. 112-117. New, aggressive SMATV operators are making their presence felt too, sometimes in combination with DBS providers, *see id.* at paras. 90-93, and new technologies are expected to further boost SMATV systems, *see id.* at para. 92.

Internet video, while admittedly not currently comparable to broadcast programming, is around the corner. With digital television, broadcasters, already providing an alternative to cable for the delivery of video programming, will become stronger competitors. Wireless has had its difficulties, but the Commission recently loosened regulatory restrictions on two-way transmissions, *see supra* at para. 85, which the wireless industry now plans to put to use in the market. The wireless industry also plans to take advantage of digital technology. *See id.* at para. 84.

These are just a few of the new kinds of companies that have entered the video programming delivery market. Others are described in the factual sections of the Report. Suffice it to say that many new and improved services are now here and more are coming into being.

* * *

Perhaps it is a question of seeing the glass as half empty or half full, but I believe that we have a significant amount of competition in video programming delivery and that, moreover, the imminent future holds a great deal of promise for even more video competition.