

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 05-255
Competition in the Market for the Delivery)	
Of Video Programming)	

REPLY COMMENTS OF COMPTTEL

COMPTTEL, through counsel, hereby submits its reply comments in the above captioned proceeding. The Commission has asked for comment on the additional actions it should undertake to achieve the statutory goals of Section 612 of the Communications Act of 1934 (47 U.S.C. §532) should the Commission determine that the 70/70 thresholds have been met. COMPTTEL takes no position in the debate on whether the 70/70 thresholds have been met. Once those thresholds are met, however, COMPTTEL submits that the Commission must adopt rules designed to fulfill the purpose of Section 612.

Congress described the purpose of Section 612 as being twofold: “to promote competition in the delivery of diverse sources of video programming *and* to assure that the widest possible diversity of information sources are made available to the public from cable systems. . . .” 47 U.S.C. § 612(a) (emphasis added). The commenters have for the most part focused primarily on what the Commission should or should not do to promote competition in the delivery of video programming.¹ The Commission must also focus,

¹ See e.g., Comments of Verizon on “70/70” Test; Comments of Center for Digital Democracy, United States Conference of Catholic Bishops and the Benton Foundation; Comments of the National Cable & Telecommunications Association; Comments of Association of Independent and Video Filmmakers, Alliance for Community Media, Benton Foundation, Center for Creative Voices in Media; Center for Digital Democracy; Common Cause, Consumer Federation of America, Consumers Union,

however, on the broader goal of assuring that the widest possible diversity of information sources are made available to the public from cable systems. Section 612(g) specifically authorizes the Commission to “promulgate any additional rules necessary to provide diversity of information sources,” once the 70/70 thresholds are met.

As the Commission is well aware, cable systems no longer limit their offerings to the one-way transmission of video programming. On the contrary, cable operators now offer their customers a wide range of services, including telephone and broadband Internet access service. Indeed, as of June 30, 2005, high speed cable modem service was available to 91% of the homes passed by cable systems and 61% of the high speed lines serving residential customers were provided by cable operators.² Congress has found that the Internet represents “an extraordinary advance in the availability of educational and information resources to our citizens” and offers “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activities” and that “[i]ncreasingly, Americans are relying on interactive media for a variety of political, educational, cultural and entertainment services.” 47 U.S.C. § 230(b).

In light of the importance of the Internet as an information source, the ability of cable operators to act as gatekeepers on the Internet and to use their network control to dominate the information services market, rules are necessary to ensure that unaffiliated providers are able to offer, and that consumers have access to, the content and services of their choice no matter which operator is providing their cable modem service. With rare

Hawaii Consumers, National Alliance for Media Arts and Culture and Media Alliance (hereinafter “AIVF”).

² *High-Speed Services for Internet Access: Status as of June 30, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, April 2006 at 2, 3.

exceptions, cable operators have largely excluded independent ISPs from reaching customers over their networks by refusing to enter into agreements with ISPs to provide transmission services and by tying the purchase of the cable operator's affiliated ISP service to the purchase of cable modem transmission service. Despite their use of public rights of way and spectrum to operate their networks and their statutory obligation to lease channel capacity to unaffiliated video programmers,³ the Commission has thus far refused to impose on cable operators any obligation to make their broadband transmission service available to competing content or service providers.⁴ Once it finds that the 70/70 threshold has been met, the Commission cannot, consistent with the Congressional directive to promulgate rules necessary to provide and make available a diversity of information sources to the public from cable systems, continue to allow cable operators to serve as the arbiters of who may offer content and service over cable systems or what their customers see and do on the Internet.

COMPTEL supports the position of AIVF that the Commission should require cable operators to make their broadband transmission services available to competing providers,⁵ but disagrees that the Commission would have to overrule its decision in *Internet Ventures, Inc. Internet On Ramp, Inc.*, 15 FCC Rcd 3247 (2000) ("IVI") in order to do so. The IVI case involved the interpretation of that part of Section 612(b) that requires certain cable operators to make leased channel capacity available to unaffiliated video programming providers. IVI had requested a ruling from the Commission that ISPs

³ 47 U.S.C. § 612(b).

⁴ *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002) *aff'd. sub. nom. National Cable & Telecommunications Association v. Brand X Internet Services*, 125 S. Ct. 2688 (2005).

⁵ Comments of AIVF at 22-24.

are entitled to use leased access to provide dial up and broadband Internet access services. The Commission denied IVI relief on the grounds that ISP Internet access service does not constitute video programming as contemplated by Section 612 of the Act.

The 70/70 rule implicates a different section of Section 612, a section that makes no reference to the designation or use of channel capacity for the provision of video programming. Rather, Section 612(g) imposes an obligation on the Commission to adopt rules necessary to ensure the availability to cable subscribers of the widest possible diversity of information sources, a category not limited to video programming services. As a result, it is not necessary for the Commission to overrule *IVI* in order adopt rules requiring cable operators to allow unaffiliated service providers access to their broadband transmission services.

COMPTEL urges the Commission to promulgate regulations that would ensure competing content and service providers have nondiscriminatory access to the broadband transmission service of cable operators, have the right to obtain that service on reasonable request, have the right to interconnect on reasonable terms and conditions, have the right to innovate and provide service without having to obtain the permission of the cable operator and that all users and customers of the cable network have the right to attach devices that will not harm the network or interfere with the use of the network by other customers. Such rules will prevent cable operators from favoring the transmission of their own or their affiliates' content and services, from acting as gatekeepers controlling who can provide content and services, from discriminating against unaffiliated content

and services in the allocation of transmission capacity, and from forcing consumers to buy unwanted content and services in order to obtain basic transmission services.

Without such rules, cable operators are under no obligation to facilitate their customers' access to the widest possible diversity of information sources. Using the past as prologue, there is no reason to believe that cable operators will voluntarily make their networks available to competing content and service providers in the future. The availability to cable subscribers of the widest possible diversity of information sources will only be possible if the Commission adopts rules that will guarantee unaffiliated providers access to the cable operator's broadband transmission network on nondiscriminatory rates terms and conditions.

April 25, 2006

Respectfully submitted,

/s/

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