

November 16, 2007

Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate
Federal Communications Commission
Washington, DC 20554



RE: Docket 06-198
Docket 05-255

Dear Commissioners Tate and McDowell:

Media Access Project is pleased to respond to your concerns for the “trustworthiness, truthfulness, and viability” of the data on which the upcoming *Video Competition Report* will rely. As we discuss below:

- The 70/70 threshold was passed at least as early as 2005.
- Data from multiple sources support a finding that the level of cable penetration remains potentially as high as 77%.
- Published data cited by the cable industry understate cable penetration.
- Warren Communications News data systematically undercounts subscribers.
- The inclusion of approximately 1 million subscribers to video services provided by telephone companies such as Verizon (FIOS) and AT&T (U-Verse) should resolve any remaining doubt, as NCTA has previously acknowledged that these systems are “cable” systems.
- The NCTA self-servingly “readjusted” the numbers it provides to the public by subtracting 8 million subscribers from previously released numbers.
- The NCTA grossly mischaracterizes the history of these proceedings in wrongly claiming that current Commission practices deviate from established methods and previous determinations. It has been on notice for 19 months that the Commission would consider and adopt necessary revisions in methodology as recommended by the Government Accountability Office (GAO) and Commissioners Cops and Adelstein.
- The Commission has explicitly relied upon Warren Communications News data in past reports. Any argument that use of this data constitutes an arbitrary change in methodology is factually incorrect.

Given the consistently inaccurate manner in which NCTA has sought to characterize the record, and the history of manipulation of industry reported numbers documented, in this proceeding and elsewhere, *see Letter of Harold Feld and Andrew Jay Schwartzman*, Docket No. 05-255 (filed May 12, 2006) (“*MAP 2006 Ex Parte Letter*”); *Written Ex Parte of Consumer Federation, et al.*, MM Docket No. 92-264 (filed October 11, 2002) (“*2002 CFA Ex Parte*”), MAP welcomes the opportunity to set the record straight so that no doubt will remain that threshold for triggering Section 612(g) was passed *at least* as early as 2005, when SBC determined using numbers provided by NCTA and the Commission that 77.2% of relevant television homes subscribed to cable systems. *See 12th Annual Video Competition Report*, 21 FCCRcd 2503, 2513 (2006). That finding was likewise consistent with the findings that year by the Government Accountability Office in its study of DBS penetration.

See GAO, *Direct Broadcast Satellite Has Grown Rapidly, But Varies Across Different Types of Markets*, (2005) (“2005 GAO Report”).

Consistent with these past findings of 77%, MAP submits the attached study by Dr. Gregory Rose. Dr. Rose used data available from ABI and further corroborated the data with additional purchases from Paul Budde Communications Pty. Ltd, an Australian firm respected by industry analysts. ***The attached study confirms the conclusion reached in 2005 that level of penetration for the relevant cable systems remains at 77%.***

MAP also notes that the analysis provided by the NCTA, Warren, and Dr. Rose excludes subscribers to video services offered by incumbent local exchange carriers (ILECs), such as Verizon’s FIOS and AT&T’s U-Verse. According to figures made publicly available by these companies and other telephone providers, the number of such subscribers currently reaches 1 million. As NCTA has previously acknowledged in this proceeding and elsewhere, such video providers are “cable operators” and subscribers to these services are therefore “cable subscribers” for purposes of Section 612(g)’s 70/70 threshold. See *Reply Comments of NCTA*, Docket No. 05-255, at 4 (filed April 25, 2006). See also *Comments of NCTA*, Docket No. 05-311 (filed February 13, 2006).

Finally, MAP takes this opportunity to respond to the recent letters of NCTA President Kyle McSlarrow, which have sought to characterize this proposed finding and changes in methodologies as an exercise of arbitrary regulatory authority. See, e.g., *Letter of Kyle McSlarrow to Chairman Martin and Commissioners*, Docket No. 06-198 (filed November 14, 2007). This grossly misstates the nature of this proceeding, which includes the culmination of a 19 month proceeding initiated by this Commission in the 2005 *12th Annual Report*. See *12th Annual Report*, 21 FCCRcd at 2512-13 (“data submitted in the record this year raises questions as to whether the so-called ‘70/70 test’ has been satisfied. Accordingly, we are seeking additional input to help the Commission further consider this issue.”). The *Notice of Inquiry* for the *Thirteenth Annual Report* was included in this proceeding as well. See *In re Assessment of MVPD Competition, Notice of Inquiry*, 21 FCCRcd 12229, 12242-43 (2006).

The Rose Analysis: ABI Data Demonstrates Penetration of 77%

As noted by the Managing Editor of Warren’s *Television and Cable Factbook*, cable operators increasingly refuse to disclose their subscriber numbers or even system locations to industry publishers, regarding such data as proprietary.¹ Dr. Rose therefore sought data from a publisher which would not raise such concerns, and which did not rely primarily on voluntary disclosures by cable operators. Because the ABI data reports aggregate numbers for all of North America (defined as Canada, the United States, and Mexico), the ABI data does not raise the same concerns that granular release of the data in other publishers raise, increasing the likelihood of more complete disclosure. ABI also uses additional tools to include cable operators not included in traditional reporters.

Deriving the number for the United States from the aggregate North America data simply requires subtracting the data from Canada and Mexico. This Dr. Rose did with the Paul Budde data. Again, because Paul Budde is a non-U.S. firm relying on non-U.S. estimates, the data were deemed to be less likely to suffer from the systemic undercounting described by Taliaferro. Subtracting the Canada and Mexico data, and dividing by the number of cable homes passed, Dr. Rose arrived at a

¹As has been noted in the past, cable operators also have incentive to withhold data to avoid regulatory consequences. See, e.g., *2002 CFA Ex Parte*.

penetration rate of 77%.

If this seems difficult to accept in light of the oft repeated claims of NCTA that penetration stands at 54% and no higher, please consider the logical difficulties in NCTA's analysis. As noted in the 2005 MVPD Competition Report, the NCTA submitted numbers for penetration of between 62% and 68.9% based on its own member data and reporters such as Kagan. *12th Annual Report* 21 FCCRcd at 2514. For NCTA's penetration projection to drop from 68.9% to 54% in two years, cable operators would need to have hemorrhaged millions of subscribers. But an analysis of the SEC Form 10Ks submitted by the largest cable operators shows no such dramatic loss. To the contrary, as first documented in the *MAP 2006 Ex Parte Letter*, the major cable operators experienced consistent **gains** in subscribers from approximately 2004 until 2006 (the exception being Adelphia, which experienced modest declines). Since then, analysis of the publicly reported subscriber numbers for Comcast, Time Warner, Cox² and Cablevision – which together account for over 50% of the cable subscriber market – plateaued, and experienced modest losses in 2007. This is utterly inconsistent with NCTA's position that between 2005 and 2007, penetration of the relevant cable systems dropped from 68.9% to 54%.

Rather, the discrepancy in the publicly available data from Kagan and others was persuasively explained by the very *Communications Daily* article that prompted your letter. As *Communications Daily* reported:

Factbook figures underestimate the number of homes passed by cable systems -- **and the number of subscribers** -- because not all cable operators participate in its survey. "More and more operators are just not giving up" those numbers, [Taliaferro] said."

(Emphasis added.)

Although NCTA has done its best to obscure the implications of this statement,³ the meaning is clear. **Because cable operators increasingly withhold needed subscriber data, industry publishers such as Kagan, Nielsen and Warren consistently and increasingly underreport the number of cable systems and cable subscribers.** This explains why Nielsen finds a rate of 61.1%, Kagan a rate of 58.1%, and Warren a rate of 71.4%. All of them undercount, according to Michael Taliaferro of Warren, but the level of undercounting will depend on the level of responsiveness by cable operators. Where more cable operators provide data (as appears to have been the case with Warren), the undercounting will be less severe. Where fewer cable operators respond, the undercounting will increase.⁴

²Cox is now privately held, but it reported numbers for the relevant period.

³Consumer groups have long objected to the use of "generally accepted industry data" rather than mandatory reporting requirements since the Commission first adopted this approach for its cable ownership limit in 1999. See *Petition for Reconsideration of CFA, et al.*, MM Docket No. 92-264 (filed January 3, 2000). The self-confessed dependency of data publishers on the voluntary cooperation of cable operators with every incentive to withhold or shade data demonstrates the validity of this critique. Nevertheless, because the problem is an undercount, the number of actual subscribers exceeds the reports given.

⁴NCTA's insistent use of a 54% figure appears to rely on a long-discredited staff survey in the *11th Annual MVPD Report*. It should be noted that the Commission never adopted this proposed finding, which relied on data the GAO had criticized as so riddled with errors that Congress could

Cable operators, of course, have every right to decline participation in a voluntary survey. Similarly, data publishers have every right to attempt to make estimates with the data they have. The issue here is not whether cable operators have colluded to deceive the Commission or whether NCTA has merely sought to exploit this defect in the private reporting system for its own ends. Rather, as you both have stated, the issue is ensuring “the accuracy of the information” in “one of the most important Reports this Commission produces.”

Further, because the problem is a systemic *undercount* rather than a systemic overcount, 71.4% represents a floor, not a ceiling, for the relevant cable penetration. While it would certainly be preferable to have a precise number (and the Commission should therefore adopt the proposal for mandatory reporting), the Commission need only determine that penetration of cable systems with more than 36 activated channels is at 70% or greater. Based on the ABI and Paul Budde data analyzed by Dr. Rose, and the systemic undercounting acknowledged by Warren, it is clear that the 70% threshold has been passed. While the Commission should insist that cable operators provide data under penalty of perjury in future surveys, the critical question of whether the 70/70 threshold established by Congress has been met is certainly resolved here.

NCTA’s Argument That Changes In Methodology Are Arbitrary And Capricious

In addition, MAP takes this opportunity to correct NCTA’s repeated accusations that the Commission has somehow deviated from established methods and previous determinations in an arbitrary manner. This is gross mischaracterization of the Commission’s past reports and the pending proceedings in Docket Nos. 05-255 and 06-198. As neither of you were serving on the Commission during this history, it is unsurprising that NCTA should seek to obfuscate and misconstrue the true state of the record in this fashion. A brief review of the Commission’s previous (and dismal) record shows why current efforts of Chairman Martin constitute a substantial improvement over previous reports (although still far short of any desired level of accuracy).

The FCC first sought data on the 70/70 test in the notice for the *Public Notice* for the Ninth Annual Report (reporting for 2001). 16 FCCRcd 13330, 13335. Since then, the Commission has refused to adopt a consistent methodology or make a determinative finding, instead contenting itself that it was sufficient that the test was not met. *See, e.g., 10th Annual Report*, 19 FCCRcd 1606, 1621 (2003).⁵ It was in the 11th Annual Report, released in 2005, that the FCC observed that NCTA (based on Kagan’s and its own numbers) submitted rates varying from 68.9% to 62%. *11th Annual Report*, 20 FCCRcd 2755, 2767-8 (2005). At the same time, the report also included an experimental and highly controversial “staff estimate” that placed the relevant number at 54%. *Id.* Because of the inherent unreliability of the data used for this estimate, and because it relied on several unsupported assumptions, the Commission never adopted the 54% estimate. Indeed, in the 12th Annual Report and Further Notice of Proposed Rulemaking, the Commission expressed considerable skepticism with regard to the 54% number. *12th Annual Report*, 21 FCCRcd at 2514. To the extent NCTA attempts to portray the 54% “staff estimate” as a number endorsed by the Commission, it grossly misrepresents the record. To the extent NCTA suggests that the Commission risks reversal

not rely upon it, nor upon any conclusions drawn from it. *See* GAO, *Issues Related to Competition and Subscriber Rates in the Cable Industry* at 19 (2003). In the *FNPRM*, the Commission explicitly rejected the 54% number as completely at odds with all other numbers.

⁵Of note, in both the *10th Annual Report*, 19 FCCRcd at 1621 and the *11th Annual Report*, 20 FCCRcd at 2768, the Commission explicitly cited Warren data of the type relied on here.

for abandoning a number it has already rejected as unreliable, it is an argument without merit.

In the meantime, the FCC's questionable methodology and inability to find critical numbers with certainty began to attract attention and criticism. The GAO issued no fewer than 3 reports in the period of 2002-03 describing the weakness of the FCC's cable data collection methodology, including one entirely dedicated to the inadequacies of the FCC's process for collecting, verifying, and processing information. *See, e.g.*, GAO, "Data Gathering Weakness In FCC's Survey of Factors Underlying Cable Rate Change," (2003). Chief among the GAO's criticism was the FCC's reliance on voluntary disclosures of industry data by the industry participants themselves, with no attempt at independent verification, *i.e.*, the precise method embraced and urged by NCTA.

In its final report on the matter in 2003, the GAO stated:

[The] FCC's findings provide the Congress with information relevant to important policy decisions including regulation of cable rates and/or services and media consolidation and convergence of video, voice and data services. ***The lack of reliable information in the FCC's cable rate report may compromise the ability of Congress to make these important policy decisions and of the FCC to monitor and provide oversight of the cable industry.***

GAO, "Issues Related to Competition and Subscriber Rates in the Cable Industry" at 19 (2003) (Emphasis added).

It is to this "golden age" that NCTA argues the Commission must return. Indeed, NCTA argues that abandoning the methodologies that GAO described as so defective that it "may compromise monitoring and oversight of the cable industry" would be arbitrary and capricious. *Id.*

Nor was GAO alone in its criticism of the Commission's failure to acquire reliable data. Commissioners Copps and Adelstein increasingly chastised the Commission for its uncritical acceptance of industry data and unwillingness to generate its own data. *See, e.g.*, *11th Annual Report*, 20 FCCRcd at 2903 (Joint Statement of Commissioner Copps and Commissioner Adelstein). Public advocates likewise loudly protested. As a result, the *11th Annual Report*, on which NCTA so enthusiastically relies, contains several notable disclaimers reflecting the increasing criticism of the FCC's statistical methodology -- and a concurring statement from Copps and Adelstein criticizing the FCC for its failure to consider the criticisms by the GAO and others.

To his credit, Chairman Martin sought to address these criticisms and deficiencies in his first *Notice of Inquiry* as Chairman. The *NOI* for the *12th Report* recognized the limitations of the Commission's previous analysis and sought comments on how to address these concerns. In response SBC submitted its analysis relying on subscriber numbers maintained on NCTA's website and on the Commission's own numbers. *See Reply Comments of SBC*, Docket No. 05-255 at 17 (filed October 11, 2005).

In the *12th Annual Report*, the Report most recently released (2006), the FCC recognized that it had no reliable means of determining whether it had met the 70/70 threshold. *12th Annual Report*, 21 FCCRcd at 2515. "In light of the significance of this issue and commenters' disagreements as to whether the statutory standard has been satisfied," *id.*, the FCC issued a *Further Notice of Proposed Rulemaking* seeking comment on how to develop an appropriate methodology and seeking any and all relevant data that could assist in determining whether the 70/70 threshold was met. *Id.* In its *Notice of Inquiry* for the 13th Annual Report, the Commission explicitly observed that this FNPRM remained pending, and invited parties to refresh the record. *13th Annual Report NOI*, 21 FCCRcd 12229, 12242 (2006).

To the extent that the NCTA and others maintain that the Commission has failed to put parties on notice that its previous determinations were suspect and that the Commission would actively seek to improve the accuracy of its reports by relying on new methods and new sources of information, they are clearly mistaken. The allegation by NCTA that “important factual inquiries are subject to sudden, inexplicable shifts in the FCC’s methodology and conclusions” is patently false. *NCTA, like all other participants in this proceeding has been on notice since March 2006 that the FCC regarded its previous conclusions and methodology as unreliable.* It has had more than **19 months** to recognize the fact that the days when the FCC unquestioningly accepted NCTA’s unverified numbers as reliable were coming to a close.

MAP and others have consistently throughout the course of this proceeding filed proof of NCTA’s efforts to obfuscate the true state of penetration. *See, e.g., Comments of Association of Independent Video Filmmakers*, Docket No. 05-255 (filed April 3, 2006). For example, in an *ex parte* filing in this very proceeding, MAP provided documentation that NCTA had reduced its publicly available subscriber count by **8 million subscribers** after MAP used the original number to demonstrate that the 70/70 threshold had been met in 2005. *See MAP 2006 Ex Parte Letter* at 3. Given that NCTA seemed willing to readjust its previously publicly displayed subscriber numbers by as much as 8 million subscribers for the express purpose of obscuring whether the 70% penetration threshold were met, it strains credulity for the NCTA to argue that questioning these numbers is an exercise in arbitrary rulemaking or the result of an unwarranted “vendetta” against the industry.

MAP and others have consistently urged the Commission to seek independent data rather than rely on the unverified word of self-interested industry participants. This call has been joined by Commissioners Copps and Adelstein as well as the GAO. That NCTA finds this result unacceptable hardly makes it arbitrary and capricious. To the contrary, as “two commissioners [who] are indeed seeking the trustworthiness, truthfulness, and viability of the data” we hope that you will reject the efforts of NCTA and its members to obscure the fact that the 70% threshold was reached at least as early as 2005, and that Commission put all parties on notice more than 19 months ago that it would seek more reliable data and methodologies. Given the evidence in this record collected by MAP and others, a finding that the Section 612(g) 70/70 threshold is met is not merely supported by the record; it is the only non-arbitrary outcome.

Sincerely,

/s/

Harold Feld
Senior Vice President

/s/

Andrew Jay Schwartzman
President and CEO

cc. Chairman Martin
Commissioners Copps and Adelstein

Estimating the Take Rate for the 70/70 Rule: An Alternative Methodology

Gregory Rose

Econometric Research and Analysis
November 15, 2007

There has long been reason to suspect the data which the cable industry provides to various reporting services like Warren Communications News, Kagan Research, and Nielsen Media Research for U.S. cable coverage and subscribers. Simply put, the cable industry has considerable incentive to misstate it. Specifically it has incentive to under-report both coverage and subscribers so as to avoid a finding that the 70/70 limit – that seventy percent of American homes are passed by cable and that seventy percent of homes subscribe to cable – has been reached, thus triggering additional FCC regulation of the industry. The numbers have danced around the mid- to upper-60% range reported in these sources since 2004, and tipping over in Warren Communications News' *Television and Cable Factbook*, which recently reported a 71.4% take rate to the FCC.¹ When it became clear that the FCC was prepared to take action to invoke the 70/70 rule on the basis of the Warren data, the managing editor of Warren Communications News' *Television and Cable Factbook* immediately called its own data into question in an interview in *Communications Daily*:

The figures from the *Television and Cable Factbook* aren't well suited to

¹ "November FCC Meeting to Focus on Cable Industry," *Communications Daily*, November 14, 2007, 2-4.

determining whether the threshold has been met, said Managing Editor Michael Taliaferro. Taliaferro said *Factbook* figures understate the number of homes passed by cable systems — and the number of subscribers — because not all operators participate in its survey. “More and operators are just not giving up” those numbers, he said. “We could go with two dozen footnotes when we start to report this data.” Cable operators participating in the *Factbook* survey said they passed 94.2 million homes and had 67.2 million subscribers.

The FCC official who asked him for the cumulative figure didn't say how it would be used, Taliaferro said. If he had known, he would have provided a list of caveats, he said. “It would have been a very lengthy email,” he said. Taliaferro said he did point out the shortcomings in a phone conversation with the FCC official but didn't put it in writing because he wasn't asked to. “I had no idea what they were doing with it.”²

Taliaferro's explanation makes little sense if it is meant to cast doubt on whether the 70/70 threshold is met. If the problem is industry understating number of households passed and number of subscribers because cable operators refuse to provide the data, as Taliaferro suggests, then Warren's *Television and Cable Factbook* must **understate** the number of households passed and subscribers. This means that the real numbers — the numbers we would have if all the cable providers coughed up the data — have as a matter of mathematical certainty to be greater than 70% coverage and 70% subscription. Rather than demonstrating the “unsuitability” of the data for the purposes of 70/70 analysis, Taliaferro in fact gave evidence that the Warren figure of 71.4% of homes having subscribed to cable (the take rate) as of October 10, 2007 has to be an understatement of the reality.

In fact, there are several problems with the data on offer from Warren, including the fact that it relies only on information provided by NCTA members, ignoring overbuilders and much smaller systems which still meet the 36-channel requirement, as well as the incentive of NCTA members to understate their coverage and take rates to

² *Ibid.*, 3-4.

avoid further regulatory scrutiny. These problems also impact the data reported by Nielsen Media Research and Kagan Research, as well as the fact that they appear to involve more estimation than the Warren numbers.

The question remains however: is there a reliable source of data on cable coverage and take rates in the U.S.? Answering this required, first, determining a source to which the cable industry would have little incentive to withhold data or incentive to shape the data for regulatory reasons. ABI Research collects data from U.S., Canadian, and Mexican cable providers, including overbuilders and smaller system providers, on coverage and subscription in all of North America. The U.S. providers have vastly less incentive to worry whether these figures reveal proprietary information or attract undue regulatory scrutiny because they are merged with the Canadian and Mexican data and, thus, do not on first look provide a ready gauge of the U.S. situation. If it were possible to determine the values of the Canadian and Mexican coverage and subscription data and subtract it from the ABI North American data, the remainder would be the numbers provided by the U.S. cable industry in a venue where they had vastly less incentive to withhold or alter data and in which under-reported overbuilders and smaller providers would be represented.

The Australian international cable and broadband reporting firm, Paul Budde Communications Pty., Ltd., proved to be precisely such a source of the Canadian and Mexican data. Being a reporter which does not fixate on the U.S. market, Budde is less likely to be susceptible to the kinds of pressures and constraints to which U.S. reporters are subject to from the cable industry, and Budde's international reporting is highly regarded among industry analysts. The ABI Research North American coverage and

subscription data and the Paul Budde Communications Pty., Ltd, data for Canada and Mexico were obtained.

ABI Research reports 133.71 million households passed by CATV in North America in 2006.³ Subtracting the 12.6 million Canadian households⁴ and 10.2 Mexican households⁵ passed, we are left with a total of 110.91 million households passed in the U.S. ABI Research reports 99.61 million CATV subscribers in North America in 2006.⁶ Subtracting the 8.65 million Canadian CATV⁷ and 4.97 million Mexican subscribers,⁸ we calculate 85.99 million CATV subscribers in the U.S. This gives us a take rate of 77.53%, which is comparable to the Warren Communications News take rate of 71.4% (when adjusted for the described underreporting), but calculated from completely independent data.

Warren reports 94.2 million homes passed and 67.2 million subscribers, which is 16.71 million homes and 18.79 million subscribers fewer than arrived at by our alternative methodology. We attribute this discrepancy to the following factors: major cable providers have incentives to systematically understate their coverage and take rates to avoid regulatory scrutiny even to relatively trusted reporting firms like Warren (and it is difficult to plausibly dance in the upper-60% range for a take rate without fumbling and reporting figures which place the industry as a whole over 70%), a factor which does

³ ABI Research, "Cable TV Market Forecasts," 2007, Table 1-1.

⁴ Paul Budde Communications Pty. Ltd., "Canada - Convergence -Triple Play & Digital TV," October 28, 2007, 8.

⁵ Paul Budde Communications Pty., Ltd., "Mexico - Convergence -Triple Play & Digital TV," October 28, 2007, 13-18.

⁶ ABI Research, *op. cit.*, Table 1-2.

⁷ Paul Budde Communications Pty. Ltd., "Canada - Convergence -Triple Play & Digital TV," October 28, 2007, 8.

⁸ Paul Budde Communications Pty., Ltd., "Mexico - Convergence -Triple Play & Digital TV," October 28, 2007, Table 9.

not come into play so intensely since the U.S. are melded into North American figures, and the ABI data take account of overbuilders and smaller providers, many of which are privately owned and do not report to state and federal capital market regulatory agencies. Furthermore, the 77.53% take rate we calculate is remarkably close to that estimated by SBC in 2005:

In the *Eleventh Report*, the Commission concluded that the first 70 percent statutory threshold has been met: 79.8 percent of all occupied households are now passed by cable systems with 36 or more channels. However, it also found that the second 70 percent statutory threshold had not been met: of the 84,415,707 occupied households passed by systems with 36 or more channels, only 58,177,885 (or 68.9 percent) subscribed to cable.

NCTA's own updated data now suggest that this 68.9 percent figure may have increased to well beyond 70%. NCTA's website states that, as of February 2005, there were 73,219,360 total subscribers to cable service. Last year, the Commission found that there were 8,063,920 subscribers to cable systems with *less* than 36 channels. It is reasonable to conclude that this number has not increased over the past year, because it is unlikely that anyone would construct a new system with such limited capacity. It is far more likely that some such small systems have been *upgraded* in the last year. But using this same number of 8,063,920 subscribers to smaller systems, that would leave at least 65,155,440 subscribers to cable systems with 36 or more channels, or 77.2 percent of all households the Commission found were passed by systems with 36 or more channels (at least as of its last report).⁹

SBC used the NCTA's own data to arrive at an estimate of a 77.2% take rate.¹⁰

For more than a decade now the public interest community has complained that the cable industry systematically understates its coverage and take rates. The ABI and Budde data merely reinforce this contention. If the cable industry has evidence to refute

⁹ Reply Comments of SBC, Inc., MB Docket No. 05-255, October 11, 2005, 14-15.

¹⁰ Another indirect method of estimation is to take the FCC's 2006 estimate of 84% of U.S. television households having MPVD access and subtract out the 16.2% DBS penetration rate of MPVD households established by the GAO in a 2005 study, resulting in an estimated CATV take rate of 70.392%, which is consistent with the Warren figure, if somewhat lower than the figures produced by our method and that of SBC. It should be noted that all three independent methodologies, as well as the Warren data, reveal a take rate in excess of 70%.

these findings, then let them present that coverage and take rate data to the FCC under oath on penalty of perjury, rather than by pressure on reporting services and innuendo.