

November 19, 2007

Chairman Kevin Martin  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554



RE: Docket 06-189  
Docket 05-255

Dear Chairman Martin:

On November 16, 2007, Media Access Project submitted information in this proceeding in support of the conclusion that cable penetration has passed the 70% subscriber threshold. On further examination, it would appear that the Commission has *already* made such a finding, albeit indirectly.

On August 6, 2007, the Commission released its *Report & Order and Further Notice of Proposed Rulemaking* for the assessment of annual regulatory fees. *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCCRcd 15172 (2007). In that *Order*, the FCC placed the number of cable subscribers at 64,500,000. *Id.* at 15765. Using Nielsen's data for the number of homes passed by systems with more than 36 channels in 2006 as being 91.80 million, *see* Nielsen Media Research, "Media Related TV Households and Penetrations by DMA," November 2007, and the 64.5 million subscriber figure estimated by the FCC, we arrive at a take rate of 70.26%.

Furthermore, at least when calculating anticipated revenues, the Commission believes that cable operators continue to gain subscribers – despite NCTA's protestations to the contrary. In its March 2006 *Assessment and Collection NPRM*, the FCC found a cable subscriber base of 63,000,000 households. *See In re Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCCRcd 3708, 3751 (2006). The Commission has therefore already found that the number of basic cable subscribers *increased* by 1.5 million between March 2006 and August 2007 – a result directly at odds with the repeated assertions of NCTA that declines in cable subscriber rates make a finding of 70% penetration impossible.

MAP also notes that the 70.26% number using the FCC's estimates again validates the Warren number of 71.4%, while demonstrating that the 54% number urged by NCTA relies either on outlandish assumptions or outright inaccuracies to fall so far below the objective data. Therefore, NCTA's insistence that penetration declined from 68.9% (the number the Commission quoted NCTA as concurring with in its *12<sup>th</sup> Annual Competition Report* in March 2006) to 54% must be rejected as impossible in light of these previous determinations by the Commission.

Furthermore, the number of cable subscribers relied upon for this calculation has been officially adopted by the FCC in a vote of all five Commissioners. It would be arbitrary and grounds for reversal if the Commission attempted to use one estimation of cable subscribers for purposes of determining revenue, but another for fulfilling its statutory obligation to protect diversity and accurately measure cable market power.

Respectfully submitted,

/s/

Harold Feld  
Senior Vice President

cc. All Commissioners