

Mr. Moffett claims that “[i]n order to satisfy the 70/70 test, based on this number [63,517,700] of subscribers, the total number of homes passed (i.e. reached) by cable operators would have to be 90.7 million homes or *fewer*.” Nielsen estimates the number of homes passed by systems with more than 36 channels (i.e., systems large enough to satisfy the 70/70 test) at 91.80 million; seventy percent of the Nielsen figure would be 64.26 million,¹ or 742,300 more subscribers than Moffett estimates. The 742,300 subscriber figure falls within a margin of error of $\pm 1.17\%$ in Moffett’s estimates. There are ample reasons for believing that Moffett’s underestimates cable subscribership by at least 1.17%.

First, there are discrepancies in methods for counting MDU subscribers among and between the public equity and debt issuer and public debt-only issuer in reporting to regulatory agencies, as was amply demonstrated in the record on the Adelphia/Comcast/Time Warner transaction. Comcast was shown to systematically underreport subscribers by counting on MDUs as single subscribers rather than all the TV homes to which the Comcast signal was passed by the MDU. By relying on subscriber total provided by these cable operators to the SEC, Moffett perpetuates the underestimate which Comcast and other providers impose on the data by counting MDUs as single subscribers.

Second, Moffett’s estimates for sixteen additional, privately-held cable operators who are under no obligation to report subscriber numbers to the SEC are primarily based on figures provided by the NCTA, which absurdly claims that the overall cable take rate declined to 54% in 2006. The incentives for the NCTA to underestimate cable subscribership are too strong for the NCTA to be regarded as a reliable source of such data.²

Third, Moffett provides no basis whatsoever for the estimate of 1.7 million subscribers for smaller operators and overbuilders with systems providing more than 36 channels. Finally, Moffett’s estimates take no account of the approximately 1-1.5 million subscribers to FIOS and other IPTV systems; that alone increases subscribership above the 70% level mandated by the 70/70 test even on the basis of Moffett’s underestimates.³

¹ Nielsen Media Research, “Media Related TV Households and Penetrations by DMA,” November 2007.

² The GAO made exactly this criticism of the FCC’s reliance on data submitted by NCTA and cable operators that it failed to validate independently. This unverified data remains equally unreliable today as it did when the GAO first criticized it in 2003.

³ Note that since the vast majority of FIOS and other IPTV deployments take place in direct competition to cable, i.e., in areas of homes passed by cable,

these figures affect the numerator of the ratio without significantly altering the denominator.