

News 8 Austin, *About Us*, at [http://www.news8austin.com/content/contact\\_us/contact\\_news\\_8/](http://www.news8austin.com/content/contact_us/contact_news_8/) (visited Feb. 21, 2007).

News 10 Now, at [http://www.news10now.com/content/top\\_stories/?SecID=1](http://www.news10now.com/content/top_stories/?SecID=1) (visited Mar. 1, 2007).

News12.com, *News 12 Interactive*, at <http://www.news12.com/Home> (visited Jan. 28, 2007).

News 14 Carolina, at [http://rdu.news14.com/content/contact\\_us/](http://rdu.news14.com/content/contact_us/) (visited Mar. 1, 2007).

News Channel 3, *Anytime*, at [http://www.wreg.com/Global/story.asp?S=378308&nav=menu93\\_9\\_2](http://www.wreg.com/Global/story.asp?S=378308&nav=menu93_9_2) (visited Feb. 21, 2007).

NewsChannel 5 Network, at <http://www.newschannel5.com/content/> (visited Feb. 20, 2007).

News Channel 8, *About News Channel 8*, at <http://www.news8.net/inside.hrb> (visited Feb. 21, 2007).

News Corp., *Cablevision and News Corporation to Restructure Ownership of Sports and Entertainment Assets* (press release), Feb. 22, 2005; *2006 Annual Report*, at <http://www.newscorp.com/Report2006/AR2006.pdf> (visited Feb. 23, 2007).

Northwest Cable News at, <http://www.nwcn.com/> (visited Feb. 15, 2007).

NY 1 News, at <http://www.ny1.com/ny1/index.jsp> (visited Mar. 1, 2007).

NY 1 Noticias, at <http://www.ny1.com/ny1/Noticias/index.jsp> (visited Mar. 1, 2007).

Ohio News Now, *Where to Find ONN*, at <http://www.ohionewsnow.com/?sec=viewerservices&story=ONN/content/pool/200603/265679352.html> (visited Feb. 21, 2007).

Pennsylvania Cable Network, *About PCN*, at <http://www.pcntv.com/about.htm> (visited Feb. 15, 2007).

Pittsburgh Cable News Channel, at <http://www.wpxi.com/pcnc/index.html> (visited Feb. 21, 2007).

Phoenix News, at <http://www.azfamily.com/> (visited Feb. 14, 2007).

Radio-Television News Director's Association & Foundation, *San Diego's Newschannel 15*, at <http://www.rtnda.org/resources/nonstopnews/sandiego15.html> (visited Feb. 21, 2007).

Rainbow Media Holdings, LLC, *About Rainbow: Company Structure*, at [http://www.rainbow-media.com/about/company\\_struc\\_index.html](http://www.rainbow-media.com/about/company_struc_index.html) (visited Jan. 28, 2007).

Regional News Network, at [http://www.rnntv.com/NewsChooser/pages/multi\\_column/demo.cfm](http://www.rnntv.com/NewsChooser/pages/multi_column/demo.cfm) (visited Feb. 15, 2007).

Rhode Island News Channel, at <http://www.abc6.com/> (visited Feb. 15, 2007).

R News, at <http://www.rnews.com/> (visited Mar. 1, 2007).

RTNDA, *The Arizona News Channel*, at <http://www.rtnda.org/resources/nonstopnews/arizonanews.html> (visited Feb. 23, 2007).

RTNDA, *Las Vegas One*, at <http://www.rtnda.org/resources/nonstopnews/lasvegasone.html> (visited Feb. 23, 2007).

- San Diego News Channel 15, at <http://www.10news.com/index.html> (visited Feb. 21, 2007).
- San Diego County Television Network, at <http://www.co.san-diego.ca.us/ctn/> (visited Feb. 14, 2007).
- Six News Now, at <http://www.heraldtribune.com/apps/pbcs.dll/section?CATEGORY=HELP11&template=ovr3> (visited Feb. 21, 2007).
- SportsNet New York, *About SNY*, <http://www.sny.tv/about/index.jsp> (visited Feb. 21 2007).
- SportsTime Ohio, *About SportsTime Ohio*, at [http://www.sportstimeohio.com/about\\_sto411.php](http://www.sportstimeohio.com/about_sto411.php) (visited Feb. 21, 2007).
- Sun Sports TV, at <http://www.sunsportstv.com/about.jsp> (visited Feb. 16, 2007).
- Time Warner Cable, *Local News Channels*, at [http://www.timewarner.com/corp/businesses/detail/time\\_warner\\_cable/index.html](http://www.timewarner.com/corp/businesses/detail/time_warner_cable/index.html) (visited Feb. 21, 2007).
- Time Warner Inc., *Fox Cable Networks to Acquire Turner South* (press release), Feb. 23, 2006.
- 10 News 2, *About 10 News 2*, at <http://www.wbir.com/life/programming/local/10news2/default.aspx> (visited Feb. 21, 2007).
- Texas Cable News, at <http://www.txcn.com/> (visited Feb. 16, 2007).
- TV 33, *About Us*, at <http://www.cable33.com/About%20Us.htm> (visited Feb. 21, 2007).
- 24/7, at <http://www.ktvb.com/247/> (visited Feb. 23, 2007).
- Washington-Korean TV, *About Us*, at <http://www.wktvusa.com/about.html> (visited Feb. 21, 2007).
- WOWT, at <http://www.wowt.com/> (visited Feb. 21, 2007).
- WWLTV, at <http://www.wwltv.com/> (visited Mar. 1, 2007).
- YES Network, *About YES*, at <http://www.yesnetwork.com/about/index.jsp> (visited Feb. 21, 2007).

TABLE C-4

## Planned Programming Services

Programming Service	Planned Launch Date, If Announced
29HD Network	
2Hearts TV	
Africast Television Network	Available for carriage
The America Channel	Available for carriage
America National Network	
AMC's American Pop	
American David	
Auto Channel	
Bingo TV	
Black Television News Channel	
Blue Highways TV	Currently carried as VOD
Boating Channel	
BOB VOD – South Asian TV	Currently carried as VOD
Book Shopping TV	
Box TV – The Boxing Network	
Career Entertainment Television	
Casino & Gaming Television	
Channel Zero	
Chiller Network	NBC-Universal
Classified Channel TV	
Concert	
The Crime Channel	
CSN-Cable Science Network (also known as The Science Network)	
Destiny Channel	
Edge TV	
Election Channel	
Employment Channel	
Fad TV (Fashion & Design Television)	
Epic Sports Channel	
Eurocinema	

ExpoTV	
FAD TV: Fashion and Design Television	
Fangoria	
Film Festival Channel	
Gambling Channel	
Golden Eagle Broadcasting	Was previously carried by Sky Angel
H2O – Hip Hop on Demand	Currently carried as VOD
Harmony Channel	
Havoc Television	Currently carried as VOD
Home Improvement Channel	
The Horror Channel	
ION Life	
JTV (Jewish TV)	
The Men's Channel	
The Motorcycle Channel	
Music Plus TV	
Nano TV	Currently carried as VOD
No Good Television	
Oasis TV	Currently carried as VOD
Orb TV	
Playgirl TV	Currently carried as VOD
Puppy Channel	
Qubo	
Real Estate Channel	
The Real Hip Hop Network	
S Arts [Sovereign Media]	Available for carriage
S Caribbean Net	Available for carriage
S Comedy	Available for carriage

S Glory	Available for carriage
S Music	Available for carriage
S Sports	Available for carriage
S Worldcast	Available for carriage
Senior Citizens Television Network	Available for carriage
Shalom TV	Available for carriage
Short TV	Available on mobile phones
Southern Entertainment Television (SET 1)	Available for carriage
SET 2: Bluegrass Music	Available for carriage
SET 3: Classic Black Gospel	Available for carriage
Studio 4 Fitness	Currently carried as VOD
Studio 4 Kids	Currently carried as VOD
Studio 4 Learning	Currently carried as VOD
Tempo (An MTV Network)	
Theater Channel	
Tickets On Demand (The Ticket Channel)	
U.S. Military Television Network	
Urban Broadcasting Company (UBC-TV)	
Voy Network	Currently carried as VOD
Wedding TV	
Wheels TV	Currently carried as VOD
Wicked TV	Currently carried as VOD
Wine Network TV	Available for carriage
XY.TV	
Your Music Network	

**Sources:**

NCTA, *Cable Networks*, at <http://www.ncta.com/Organizations.aspx?type=orgtyp2> (visited Feb. 12, 2007).

29HD Network, *About Us*, at <http://www.29hdnetwork.com/about.html> (visited Feb. 13, 2007).

2 Hearts Entertainment, *2 HeartsTV*, at <http://www.2heartstv.com/> (visited Feb. 13, 2007).

Africast Global Media Inc., *Africast Global Africa Network, About Africast*, at <http://www.africast.com/africast/aboutus.html> (visited Feb. 13, 2007).

The America Channel, *FAQ*, at <http://www.americachannel.us/faq.php> (visited Feb. 13, 2007); *Channel Overview*, at <http://www.americachannel.us/overview.php> (visited Feb. 13, 2007).

Sentinel-America Corporation, *America National Network*, at <http://www.sentinel-america.com/ANN-Home-Page.htm> (visited Feb. 13, 2007).

AMC's American Pop Network, <http://www.ampop.com/page?CID=31> (visited Apr. 5, 2007).

American David Television Network, at <http://www.americandavid.com/> (visited Feb. 13, 2007).

The Auto Channel, at <http://www.theautochannel.com/> (visited Feb. 14, 2007).

Black Television News Channel, at <http://www.btnc.tv/> (visited Feb. 14, 2007).

BlueHighwaysTV, *About Us*, at <http://www.bluehighwaystv.com/pgabout.cfm> (visited Feb. 14, 2007).

The Boating Channel, *About Us*, at [http://www.boatingchannel.com/cgi-bin/start.cgi/articles/about\\_tbc.html](http://www.boatingchannel.com/cgi-bin/start.cgi/articles/about_tbc.html) (visited Feb. 14, 2007).

BOBVOD, at <http://www.bodvod.com/home.do> (visited Feb. 14, 2007).

Book Shopping TV, at <http://www.bookshoppingtv.com/> (visited Apr. 5, 2007).

BOX TV – The Boxing Network, at <http://www.boxtv.org> (visited Apr. 6, 2007).

Career Entertainment Television, *About CETV*, at <http://www.ce.tv/article.php?story=20040702201312200> (visited Feb. 14, 2007).

Casino & Gaming Television, at <http://www.cgtv.com/> (visited Feb. 14, 2007).

Channel Zero.com, at <http://www.tvchannelzero.com/> (visited Feb. 14, 2007).  
(visited Feb. 14, 2007).

NBC-Universal, Chiller Network, at <http://www.chillernetwork.com/> (visited Apr. 9, 2007).

The Classified Channel, *About Us*, at <http://www.classifiedchannel.com/index.php?a=28&b=142> (visited Apr. 5, 2007).

The Concert Network.com, at <http://www.theconcertnetwork.com/> (visited Feb. 14, 2007).

The Science Network, *About Us*, at <http://www.csntv.org/about/> (visited Apr. 6, 2007).

Destiny Channel, *About*, at <http://www.destinychannel.com/about.htm> (visited Feb. 14, 2007).

Edge TV, *About Us*, <http://www.theedgetv.com/> (visited Feb. 14, 2007).

The Election Channel, at <http://www.electionchannel.com/> (visited Apr. 6, 2007).

The Employment Channel, *About Us*, at <http://www.employ.com/aboutUs/> (visited Feb. 14, 2007).

Epic Sports Channel, at <http://www.epicsportschannel.com/index2.html> (visited Feb. 14, 2007).

Eurocinema, *About*, at <http://www.eurocinema.com/about.php> (visited Feb. 15, 2007).

ExpoTV, *About Expo*, at [http://www.expotv.com/about\\_expo/background/](http://www.expotv.com/about_expo/background/) (visited Feb. 15, 2007).

Fangoria, at <http://www.fangoria.tv/> (visited Feb. 15, 2007).

Film Festival Channel, at <http://www.filmfestivalchannel.com/> (visited Feb. 15, 2007).

The Gambling Channel, at [http://bfcgroup.com/helluvatough/gambling\\_channel.htm](http://bfcgroup.com/helluvatough/gambling_channel.htm) (visited Apr. 6, 2007).

Golden Eagle Broadcasting, *About Us*, at <http://www.goldeneagle.tv/about.html> (visited Feb. 15, 2007).

H2O Hip Hop on Demand, at <http://www.h2opresents.com/> (visited Apr. 6, 2007).

Harmony Channel, at <http://harmonychannel.com/about-the-harmony-channel.html> (visited Feb. 15, 2007).

Havoc Televison, *About Havoc*, at <http://www.havoctv.com/page.asp?id=11757> (visited Feb. 15, 2007).

Home Improvement Channel, at <http://www.homeimprovementchannel.com/> (visited Feb. 15, 2007).

Horror Channel, *About Us*, at <http://www.horrorchannel.com/index.php?name=Sections&req=viewarticle&artid=3&page=1> (visited Feb. 15, 2007).

Ion Life, *Ion Media Launches 24-hour Broadcast Digitnet Branded ION Life* (press release), Feb. 21, 2007, at <http://www.ionmedia.tv/press/press.cfm?id=30>.

JTV, at <http://www.jtelevision.com/> (visited Apr. 6, 2007).

The Media Group, *The Networks Group*, at <http://www.themediagroup.com/> (visited Feb. 17, 2007).

Men's Channel TV, at <http://www.menschanneltv.com/> (visited Feb. 17, 2007).

The Motorcycle Channel, at <http://www.motorcyclechannel.tv/5.html> (visited Feb. 15, 2007). (visited Feb. 15, 2007).

Music Plus TV, at <http://musicplustv.com/> (visited Feb. 15, 2007).

Nano Network, Inc., *About Nano*, at <http://watchnano.com/aboutnano/index.htm> (visited Feb. 15, 2007).

No Good Television, <http://www.ngtv.com/> (visited Apr. 9, 2007).

Oasis TV, *About Us*, at <http://www.oasistv.com/about/index.html> (visited Feb. 15, 2007).

Orb TV, at <http://www.orb.com/en/about> (visited Apr. 9, 2007).

Playgirl TV, at [http://www.tdmlc.com/Playgirl\\_Overview.pdf](http://www.tdmlc.com/Playgirl_Overview.pdf) (visited Feb. 15, 2007).

The Puppy Channel, *About The Puppy Channel*, at <http://www.thepuppychannel.com/tvframe.htm> (visited Feb. 15, 2007).

Qubo, *About Qubo*, at <http://www.qubo.com/about.asp> (visited Feb. 15, 2007).

Real Estate Channel, *About Us*, at <http://www.realestatechannel.com/about.html> (visited Feb. 15, 2007).

The Real Hip Hop Network, *About Us*, at <http://www.rhn.tv/> (visited Feb. 15, 2007); <http://www.ssm-media.com/> (visited Feb. 15, 2007).

S Networks, at <http://www.snetworks.tv/home.html> (visited Feb. 15, 2007).

SCNTV, *About*, at <http://www.scntv.com/> (visited Feb. 14, 2007).

ShalomTV, *About*, at <http://www.shalomtv.com/> (visited Feb. 14, 2007).

Short TV, *Company Info*, at <http://www.shorttv.com/companyinfo.htm> (visited Feb. 14, 2007).

The SET, *Channels*, at <http://www.theset.net/channels.html> (visited Feb. 14, 2007); *About*, <http://www.theset.net/about.html> (visited Feb. 14, 2007).

Studio 4 Networks, *Channels*, at <http://www.studio4networks.com/> (visited Feb. 16, 2007).

Tempo, *About Us*, at [http://www.gottempo.com/about\\_us.php](http://www.gottempo.com/about_us.php) (visited Feb. 17, 2007).

The Gaming Channel, *About Us*, at <http://www.thegamingchannel.tv/> (visited Apr. 9, 2007).

The Theatre Channel, at <http://www.theatrechannel.com/> (visited Apr. 9, 2007).

Ticket Channel TV, at <http://www.theticketchannel.tv/> (visited Feb. 16, 2007).

US Military TV Network, at <http://www.usmilitary.tv/1.html> (visited Feb. 16, 2007).

UBC, *Mission*, at <http://www.urbanbroadcasting.tv/mission.html> (visited Feb. 16, 2007).

Voy Network, at [http://www.voy.tv/what\\_is\\_voy/index.html](http://www.voy.tv/what_is_voy/index.html) (visited Feb. 16, 2007).

Wedding TV, at <http://www.tvwed.com> (visited Feb. 16, 2007).

Wheels TV, at <http://www.wheelstv.net/about/> (visited Feb. 16, 2007).

Wicked On Demand, at <http://www.tdmllc.com/wicked/about.html> (visited Feb. 16, 2007).

Wine Network, Inc., at <http://www.winetv.tv/> (visited Feb. 16, 2007).

XYTV, *Watch*, at <http://www.xy.tv/watch.asp?mode=page> (visited Feb. 16, 2007).

Your Music, at <http://www.yourmusicnetwork.net/> (visited Feb. 16, 2007).

TABLE C-5

## Top 20 Programming Services by Subscribership

Rank	Programming Network	Number of Subscribers (Mil.) <sup>(1)</sup>	Ownership Interest in Network
1	Discovery Channel	91.2	Cox, Advance/Newhouse, Discovery Holding Co.
2	ESPN	91.0	Disney, Hearst
3	CNN	90.9	Time Warner
4	USA Network	90.8	NBC-Universal
4	TNT	90.8	Time Warner
6	C-SPAN	90.7	National Cable Satellite Corporation <sup>(2)</sup>
7	Lifetime Television	90.6	Disney, Hearst
8	ESPN2	90.5	Disney, Hearst
8	The Weather Channel	90.5	Landmark
8	Nickelodeon	90.5	Viacom
8	TBS	90.5	Time Warner
12	Spike TV	90.4	Viacom
12	A&E	90.4	Disney, Hearst, NBC-Universal
14	QVC	90.3	Liberty Media
14	TLC	90.3	Cox, Advance Newhouse, Discovery Holding Company
16	Headline News	90.1	Time Warner
17	MTV	89.9	Viacom
17	Home & Garden TV	89.9	EW Scripps
17	ABC Family Channel	89.8	Disney
20	History Channel	89.7	Disney, Hearst, NBC-Universal
20	Toon Disney	89.7	Disney
20	VH1	89.7	Viacom

**Notes:**

<sup>(1)</sup> In addition to cable systems, other MVPDs such as DBS (direct broadcast satellite) systems, wireless cable (or BRS) systems, PCOs (private cable operators or SMATV) services, and HSD (home satellite dish) program providers may distribute these signals. Subscriber figures may include these noncable MVPD services.

<sup>(2)</sup> C-SPAN is a private, non-profit company, created in 1979 by the cable television industry to provide public access to the political process. C-SPAN receives no government funding; operations are funded by fees paid by cable and satellite affiliates who carry C-SPAN programming. The C-SPAN Board of Directors is comprised of executives from large and small cable television operating companies. While the board establishes network policy and provides financial oversight, it is not involved in C-SPAN's editorial decision-making. See C-SPAN, *About Us: Corporate Information*, at <http://www.c-span.org/about/index.asp?code=About> (visited Feb. 20, 2007).

**Source:** Kagan Research, LLC, *Network Census: June 30*, Cable Program Investor, July 28, 2006, at 11.

**TABLE C-6**  
**Top 20 Programming Services by Prime Time Rating**

Rank	Programming Service	Ownership Interest in Network
1	USA Network	NBC-Universal
2	Disney	Disney
3	TNT	Time Warner
4	Nickelodeon	Viacom
5	Adult Swim <sup>(1)</sup>	Time Warner
6	HBO <sup>(2)</sup>	Time Warner
7	Lifetime	Disney, Hearst
8	TBS	Time Warner
9	Nick at Nite <sup>(1)</sup>	Viacom
10	American Movie Classics	Cablevision
11	Cartoon Network	Time Warner
12	Fox News Channel	News Corp.
13	ESPN	Disney, Hearst
14	Spike TV	Viacom
15	FX	News Corp.
16	Discovery Channel	Cox, Advance Newhouse, Discovery Holding Company
17	Comedy Central	Viacom
18	HGTV	EW Scripps
19	Hallmark Channel	Liberty Media
20	MTV	Viacom

**Notes:**

<sup>(1)</sup> For ratings purposes, Nielsen separates the 24-hour network that is comprised of Nickelodeon and Nick at Nite, as well as the 24-hour network that is comprised of Cartoon Network and Adult Swim. We count each 24-hour network once, but follow Nielsen's method for this table.

<sup>(2)</sup> In the past this chart has included basic cable networks only. This year, we are using data directly from Nielsen that includes premium networks when calculating ratings by ranking.

**Source:**

Nielsen Media Research, *Top 50 Cable Networks Primetime, June 2006*.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 06-189*

In enacting the Cable Television Consumer Protection and Competition Act of 1992, Congress sought to promote video competition. Competition in the market for video programming serves to improve quality and customer service, increase consumer choice, decrease prices, and promote innovation.

As this year's report reflects, we are continuing to see wired competitors to cable operators enter the market. The Commission has been working consistently to facilitate this type of competitive entry into the video market. Such competition is not only good for consumers of video services (as it is the only form of competition that checks cable prices), but it promotes the deployment of the broadband networks over which the video services are provided. It is my hope that the policies that we have recently put in place – such as prohibiting exclusive contracts between cable operators and owners of multiple dwelling units – will only serve to encourage additional competitive entry. We intend to closely monitor the progress of new entrants and address any issues that we find impede such progress.

As we have in our last reports, this year's Report looks at the evidence regarding whether we have met the statutory test in section 612(g) of the Act. Specifically, the Commission is to determine when (1) "at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States" and (2) "are subscribed to by 70 percent of the households to which such systems are available. Several commenters, including CFA, MAP, and AT&T, argued that the test has been met. Others, primarily the cable industry, argue it has not been met. For the first time this year, however, the Commission received data from one of the sources the industry itself relies on, Warren Communications News, that results in finding that the test has been met. Specifically, its data shows that 71.4% of households passed by cable systems offering 36 or more channels subscribe to these systems.

The Commission has used Warren's data for its 70/70 calculations since we started reporting on these benchmarks in the Tenth Annual Report. In both the Tenth and the Eleventh Annual Reports, the Commission reported that data from Warren showed that the second prong of the 70/70 test was 68.9 percent; in the Twelfth Annual Report, the Warren data showed that the second prong was 67.8 percent. We rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels as specified in the statute. In addition, Warren collects its data directly from cable television operators or individual cable systems to create a large database of cable industry information. Warren states that it is the only research entity that directly surveys every cable system at least once every year, providing the most complete source of cable data. In fact, the cable systems represented in Warren's database serve 96% of all subscribers nationwide.

Certain parties have urged us to look at Kagan or Nielsen, and we appropriately include those numbers in our Report today. However, these companies, unlike Warren, do not report data for cable systems with 36 or more channels. Thus, neither Kagan nor Nielsen provide the precise data we need to perform the calculation specified by the statute. Moreover, the Kagan estimate regarding the number of households passed by cable, 113,600,000, is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, while the Commission has cited Kagan data in previous Video Competition reports, it has always been clear that it should be used merely as a trend indicator, rather than as a precise estimate for any particular year.

Our Report today also references data from the Commission's price survey data and Form 325, as

we have in years past. However, it is also important to understand that these two sources represent extremely small samples and therefore cannot be relied upon for this purpose. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database) and collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to all 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers. Indeed, as NCTA itself argued to the Commission in years past, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry."<sup>979</sup>

While I would have been comfortable relying on the data submitted by Warren, I am pleased that we have determined to avoid the debate in the future about which sources of data are the most accurate and will now receive data from the companies themselves. This will have the added benefit of including the data from sources that even Warren doesn't include: subscribers to incumbent telephone companies that are providing service as a cable operator. For example, had Warren included data from Verizon, the second prong of the 70/70 test would have been 72%.

---

<sup>979</sup> NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).

STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS

*Re: Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 06-189*

Ever since I arrived at the Commission six years ago, I have been deeply concerned about increasing concentration in the cable industry. I simply can't see how American consumers benefit when a handful of vertically-integrated media giants have so much control over so much content. This industry structure provides precious little space for the creative genius of independent content producers and artists. And it has led to prices that continue to rise far faster than inflation.

For years, I have also been troubled by the approach of the FCC's annual video competition report, which I think has unreasonably minimized the harm that increased consolidation has visited upon the American consumer. In particular, I have expressed serious doubts about our reliance on industry-supplied video customer data. Indeed, one of my top priorities here at the Commission has been to improve our data-gathering for *all* the industries we regulate and to ensure that *all* our decisions are grounded in the best available data and analysis.

Now, we have new evidence placed in the record by public interest advocates and at least one industry source that casts real doubt on the validity of existing industry-supplied customer counts. This new evidence indicates that the cable industry may very well have met the 70/70 threshold established by Congress. In light of these facts, I think that the most responsible course of action at this point is for the Commission to act swiftly to compel the industry to open up its books to put this question to rest once and for all.

I want to emphasize that word "swiftly." Today's decision must not be an open-ended invitation to delay. Getting data *in* to the Commission within 60 days doesn't always translate into getting an answer *out*. Accordingly, I would have preferred that the Commission commit in today's item to reaching a 70/70 determination within 45 days of receiving the industry's data.

The lack of programming diversity and competition in the American video services market is a serious problem and must not be left to languish. I sincerely hope that my colleagues and I can move past debates about data and on to the far more important issue of how to ensure a more diverse, democratic, and vigorously competitive American media environment.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 06-189*

I support the Commission's Thirteenth Annual Report on the state of competition in the video programming marketplace. Every year, the purpose of this report is to provide Congress and the American people with the Commission's best and honest assessment of competition in the evolving video marketplace. I support this year's report, but I write separately to address the important issue of whether the 70/70 benchmark in section 612(g) of the Communication Act has been reached.

The Commission's determination regarding the 70/70 benchmark has critical policy implications but, at the same time, is a question of fact. I would have no hesitation to invoke our authority if the evidence clearly justified that the standard had been breached. Many positive initiatives to promote diversity, such as a national baseline PEG requirement, could result. Yet, it's our job to follow the facts, to find the truth wherever it may lead. Congress did not ask us to impose the outcome we might prefer solely based on policy goals, no matter how admirable they may be. Congress asked for an honest assessment. So, I am pleased that the revised version of this Report seeks further comment on this important question and compels all cable providers to provide their data under penalty of law within 60 days.

In order to base our decision on the facts, Commissioners need access to all the facts. Unfortunately, the most important data we have – the FCC's own numbers – were suppressed from the Commissioners until the last minute. I did not learn until after 7:00 pm last night that the FCC's own 2006 survey found that only 54 percent of homes passed subscribe to cable. Similarly, the FCC's cable price survey came in at 55.2 percent penetration.

Based on these newly unearthed facts and the conflicting evidence on the record, I am unable to support a finding that 70 percent of homes passed subscribe to cable at this time. The data is inconclusive. If we were truly searching for the truth, it is inconceivable that our own data would be cast aside without mention. It was just last year that I called for more rigorous data collection by the FCC. To find that this year's FCC data was suppressed casts a long shadow over this endeavor. They tried to hide the ball from their own team.

In every previous year, the Video Competition Report included data from the FCC's "Annual Report of Cable Television Systems," which solicits from the operators the very data needed to determine if 70/70 is met, including subscribership, penetration rates and number of channels available. Yet, it wasn't until yesterday that it became apparent that the data from this year's survey was mysteriously redacted from the draft report we were reviewing.

The draft attempted to rely solely on data from Warren Communications, while disregarding a multitude of other sources included in previous reports. This was especially troubling with respect to our own data from our Annual Report's FCC Form 325. In fact, in the "Supporting Statement" to FCC Form 325, the Commission justifies its request for this information by stating explicitly that it is a more appropriate tool to rely upon than Warren data, acknowledging:

"Basic information concerning cable television system operation is available from commercial sources such as A.C. Nielson and Warren Publishing; however, because this information is not subject to

the accuracy and specificity requirements applicable to a governmental reporting system, the Commission continues to need the information that FCC Form 325 provides.”

While there are always issues with the figures reported to the FCC, we certainly should not ignore it. Cable operators who report to us on Form 325 must certify that their data is true.<sup>980</sup> Cable systems that comprise over 50 million subscribers report to us, or over 75 percent of the total number of subscribers who report subscriber data to Warren or Nielsen. This is a large sample by any measure.

Moreover, the Commission’s attempt to rely solely on data from Warren Communications, while disregarding a multitude of other sources, is troubling. A thorough and transparent analysis of the available data – both from the FCC and independent sources – on cable penetration rates was sorely missing from the initial draft of this item. The Commission has in its possession at least four sources of cable penetration rates that were cited in previous reports: Warren, Nielsen, Kagan and FCC Form 325. In blatant contrast to previous reports, no source but Warren was cited in the initial draft, and it took a majority vote to fix that deficiency. While not determinative, it is noteworthy that all of these sources, except Warren, concluded that current cable penetration rates are less than 70 percent. We also must give careful consideration to new data, added at the last minute to the report, supplied by leading consumer advocates finding that penetration rates exceed 70 percent. I appreciate the efforts of these advocates to advance our understanding of the marketplace.

Our job of ascertaining the facts was made more difficult because the draft cherry-picked only the data that justified the outcome desired, while suppressing other data. I believe that it is our obligation to ensure that our decisions are objective and based on the facts, not outcome-driven for political expediency. Much like our media ownership studies, which are outcome-driven to support the media consolidation agenda, there was an attempt to cook the books on this report.

Just like what occurred in the media ownership proceeding, where studies were suppressed, and others were structured and conducted with the goal of facilitating consolidation, a lack of transparency will undermine the Commission’s credibility and public confidence in the work we do. I fully support the effort to quickly ask all cable operators for their actual numbers. We should have done that already. Of course, we already have data from the vast bulk of cable operators, but if more data would shed light on this, I think we should pursue it aggressively. If the data comes back that the 70/70 test has been met, I would not hesitate to invoke our authority to take positive measures to enhance diversity.

One of the reasons for the embarrassing delay of today’s meeting, and the general disarray in working through these issues, was the effort to push through such an aggressive number of controversial items today without sufficient notice to all Commissioners. Short-circuiting Commission procedures short-changes the American public in the end. This is particularly true given that nothing we are considering today requires immediate action. There are numerous items that would have benefited greatly from more deliberation and care.

---

<sup>980</sup> The operator must certify: “I HAVE EXAMINED THIS REPORT, AND THAT ALL STATEMENTS OF FACT CONTAINED THEREIN ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, AND ARE MADE IN GOOD FAITH.” False statement can result in imprisonment for up to 5 years.

This is set against a backdrop of unwinding processes here at the Commission. For example, the lack of notice to Commissioners about open meeting dates and items to be considered at these meetings hinders our ability to consider the substantive proposals and to solicit and reflect on public input. Traditionally, going back many years, items are white copied, or identified to Commissioners three weeks in advance so we can prepare, hold proper meetings with affected parties and deliberate among ourselves. Not only were we not white copied for this meeting -- the meeting itself was called with less than three weeks notice. The two and a half weeks notice was even far less time than even that, because it included both the Veterans Day and Thanksgiving holidays. It was also truncated by the day we spent on travel for a field hearing in Seattle, which was called with inadequate notice to Commissioners and the public. The problems with the items we consider today were further compounded because massive changes in some items were attempted to be inserted at the last minute.

It may be said that we have a host of issues pending before the Commission and that there is a need to drive our work forward. The Chairman certainly has the right to set the agenda and push us. But given that very volume, and the prodigious work which nobody denies we do given our vast jurisdiction, we need to know in advance which items to focus upon during the short window before open meetings. This is especially true when items are large, complex, and controversial.

Some of the policy goals today are admirable, and I share many of the concerns, for example about cable's market power, that prompted them. But why the rush? Why the effort to steamroll the Commission and the public in order to wrap up a number of items that aren't even time sensitive? Everything could have been done under regular order, with proper notice or on circulation. The only plausible explanation appears to be an obsessive drive to complete the media consolidation agenda by the end of the year, come hell or high water.

But the cover on diversity and localism is a false front. The agenda that was pushed for today was just a fig leaf, it does not provide real answers to the very real problems that permeate the media landscape. And very troubling is the attempt to punish major American companies in the process of dismantling the newspaper-broadcast cross ownership ban. Tribune, long a respected and influential institution of American journalism, has been used as a human shield to provide cover for broader rule changes, even at risk to the life of the hostage itself. Some may ask whether the entire cable industry is a foil today to show we are tough on some big media companies, even as we are forgiving to others.

Were these issues not so important, it might be tempting to admire the improvisational willingness on display here -- using every tool available, abandoning precedent and doing whatever is expedient. But that doesn't mean that there is no alternative.

I came here to be part of the expert agency -- to follow the facts wherever they lead. We cannot cook the books to pursue a political agenda without dismantling our very institution. We simply must act like the expert agency Congress intended, and not squander our precious legacy.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE  
APPROVING IN PART, DISSENTING IN PART\***

*Re: Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 06-189*

Since arriving at the FCC, I have been pleased to support policies that have facilitated commercial negotiations, provided incentives for investment, and encouraged competition; all of which hopefully results in real world benefits for consumers, whether through quality, choice, or new advances in technology.

The Annual Video Competition Report is one of the most important that this agency produces for Congress. It is the goal of this Commission to encourage competition, especially in the video marketplace. We have taken a number of steps to encourage new entrants, and consumers now have more options for video than ever before.

Our deregulatory decisions in the U.S. communications industry have resulted in significant investment--likely more than \$70 billion by the telecommunications industry in 2007 alone. We have seen unparalleled investment in new fiber deployment and new entrants offering video and broadband. Consumers are reaping the benefits with triple and even quadruple plays.

Competition can benefit consumers in terms of lower prices, a broader panoply of products, improved fidelity and quality, and even totally new tools to enhance the consumer experience. It also leads to investment, which advances both technology and innovation. With this in mind, the findings of the Annual Video Competition Report serve as a foundation for much of our policymaking. Therefore, the accuracy and transparency of the information is of paramount import.

Reasonable minds may differ in drawing conclusions from data. However, that data must be available for review and able to withstand scrutiny. Data should be complete and viable. That is why it is crucial that we set in motion a process for future competition reports as soon as possible, and that we ensure reliability and completeness prior to making an analysis of the underlying data, and then drawing a final conclusion.

This year's Report focuses heavily on the findings of one source, rather than the numerous sources our reports have included in the past. I believe we must consider a broader universe of information sources when we are considering so broad a change in policy. One option would be to supplement our analysis by requesting that Form 325 Survey information be provided by all cable operators. Just as our sister agency, the Securities and Exchange Commission, relies upon information it receives from cable companies, we should also be able to rely on the trustworthiness of the industry's own information. Finally, there should be no reason that this Commission cannot aptly analyze all relevant data, from all appropriate sources, as we do for other competition reports.

---

\* This statement was provided while Commissioner Tate was in office.

I am now able to approve this item concluding that the 70/70 test has not been met for the 2006 Report. However, I do not agree that we should postpone its delivery to Congress or to the public. I believe the information contained in the current draft supports the Report's conclusion that this data does not demonstrate with certainty that the second prong of the 70/70 test has been met. Therefore, I would like to see us move expeditiously to send this already-delayed Report to Congress now.

I look forward to working with the Chairman and my colleagues to resolve the questions that have been raised regarding the underlying data in this Report in order to provide our 2007 Report in a more timely, thorough manner. We cannot debate philosophy and substance until we all have access to full and complete information upon which to base our respective positions. And I hope that we can work together to finalize our 2007 Report to Congress expeditiously.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL  
APPROVING IN PART, DISSENTING IN PART**

*Re: Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 06-189*

Today's Report has taken an interesting journey in the past few weeks. For starters, it is about nine months overdue to Congress. Then it appeared that the Commission was going to ignore a mountain of evidence from independent analysts and prior Commission findings to favor a solitary study. According to press accounts, sometime in October, this lonely study was solicited over the phone from Warren Communications by a FCC staffer. A day or two later, the draft Report was circulated and arrived at a conclusion that was a radical departure for the FCC: that the cable industry had surged past the 70/70 threshold outlined in Section 612(g) of the Act in just one short year.

To reach this previously unattainable figure, the Commission was prepared to omit, or as some have said *suppress*, the FCC's own data as gathered from cable operators on Form 325 in favor of a study that was inserted into the record just last month without the benefit of public notice, scrutiny or comment. The author of this suddenly-dispositive analysis says that it should not be used for the 70/70 test due to large gaps in its evidentiary foundation. But the Commission was prepared to do so anyway because this flawed anomaly was the only fig leaf that could be found in an attempt to trigger an avalanche of unnecessary regulation to cascade down upon an otherwise competitive industry.

Let's compare some recent FCC reports to put this statistical prestidigitation in context. In the past, the FCC has used a variety of data sources, including our own numbers, to estimate cable subscribership. In a transparent fashion that allowed for ample public comment, our Video Competition Report historically has found that subscribership hovers at around 60 percent, falling well short of the second prong of the 70/70 test. The Commission arrived at this conclusion by using and analyzing information from several different sources and seeking public comment on them. For instance, in our Twelfth Annual Report, covering 2005:

- Using data from the FCC's 2005 Cable Price Survey, our staff estimated that 56.3 percent of houses passed subscribed to cable.
- Using data from the FCC's Form 325, our staff estimated 54 percent.
- Relying upon Nielsen and Kagan data, we cited 63.3 and 53.1 percent, respectively.
- The Warren Communications 2005 numbers determined that 67.8 percent of homes passed subscribed to cable.

Moreover, in the Eleventh Annual Report, which examined 2004 data, we similarly cited Kagan, Nielsen, Warren and our own Cable Price Survey sample data and Form 325 sample data in finding that the second prong of the 70/70 test had not been met.

Similarly, numerous independent analyses and studies have corroborated the conclusion that cable subscribership is well below the 70 percent threshold. In fact, incumbent cable operators are losing video subscribers. I do note that the Media Access Project and AT&T filed opinions late in this process claiming penetration above 70 percent, and those filings should be given appropriate consideration. But,

even so, the great weight of the evidence strongly indicates otherwise for 2006 and all years prior.

Interestingly, this year, in a disturbing development, the FCC's most recent Form 325 data was not made available to commissioners for review until 7:09 p.m. last night. It was only made available once it was obvious that a majority of the Commission would not support the initial draft of this Report because it was such a dramatic departure based on mysterious statistical manipulation. But why was this data omitted or suppressed to begin with? Was it because it concluded cable penetration was only at 54 percent, just like last year? Similarly, only once it became public that this year's Report was generating controversy, third parties, such as AT&T and MAP, filed fresh *ex parte* opinions and analyses. I value their participation and I'd like to see the Commission encourage such debate during a brightly lit and transparent public comment period before we arrive at our conclusions. Hopefully, today's Report, coupled with our Notice of Inquiry, will allow us to move forward in our quest for the most accurate data we can find.

In the meantime, all indicators point to the conclusion that the video marketplace is more competitive now than ever through the rise of cable over-builders, traditional phone companies offering video, two vibrant DBS providers, free content on the Internet, and, once the digital TV transition is complete, a multitude of free HD and multicast video streams from broadcasters. This Report underscores that cable subscribership has declined over the past year, while the two satellite companies, DirecTV and EchoStar, gained 1.8 million customers and are now the second and third largest MVPDs. America's telecommunications companies are now competing vigorously for video customers, with Verizon alone serving nearly one million video subscribers.

Today, virtually every American enjoys multiple options for the delivery of video programming and more choices in content and services than ever before. I look forward to this trend continuing so that consumers can enjoy even more of the benefits of competition. In fact, one has to wonder whether Section 612(g) is relevant anymore. The provision was enacted in 1984 at a time when only one incumbent cable provider served a local franchise. The legislative history shows us that Congress was concerned that such companies could dominate the video market as the only game in town. But, as the result of responsible de-regulatory policies that have encouraged investment and new entry, the average consumer has a choice of at least three video providers with over-builders and phone companies increasing that menu of options for millions more consumers. When competition flourishes, the need for regulation diminishes. The Report we adopt today underscores this fundamental point.

Lastly, I am puzzled as to why the majority now want to seek both 2006 and 2007 data in the context of this Report covering only 2006. As always, I fully support seeking any relevant data, provided we give adequate opportunity for public comment. The more data, analysis and public comment, the better. However, we already have the 2006 data from our Form 325 – with the exception that smaller cable operators do not file that form. But it is precisely the smaller operators that do not keep data in the form the Commission is now requesting from them. Smaller operators especially do not have the data from eighteen months ago that the majority wants. So the Commission is requesting data that simply cannot be provided in many circumstances. Will this resulting "gap" in data later be used as a basis to concoct projections that the 70/70 threshold has been met? Stay tuned.

The second most puzzling request is requiring 2007 data to be submitted into a proceeding pertaining to the 2006 video market. Shouldn't 2007 data be included in our 2007 report proceeding? What relevance does 2007 data have to the 2006 video market? Now that all of the 2006 data has finally been brought to light, as of twenty-seven hours ago, we should close the book on 2006. After all, Congress is waiting. At the end of the day, the great weight of the 2006 evidence makes clear that cable

penetration falls far short of the 70/70 threshold. Because I find this last-minute maneuver to be illogical, and dubious, I dissent from this portion of today's Report.

I support all other portions of this Report. I thank the team in the Media Bureau for their hard work.