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."[1]

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%.

[1] NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).