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FCC Adopts Rules to Promote Video Programming Diversity by Ensuring New Video Programmers Can Enter and Compete in Video Market

Order Will Increase Diversity in Programming and Choices for Consumers

Washington, D.C. – The Federal Communications Commission adopted rules to promote video programming diversity by ensuring new video programmers can enter and compete in the video market. The Order adopted by the Commission today sets the number of subscribers a cable operator may serve at 30 percent nationwide. In a further notice also adopted, the Commission seeks comment on vertical ownership limits and cable and broadcast attribution rules. Today's action will increase competition in the multichannel video programming market and provide consumers with greater programming choices and diversity.

The 1992 Cable Act was enacted to promote increased competition in the cable television and related markets and to foster a diverse, robust, and competitive market in the acquisition and delivery of multichannel video programming. To further these goals, Congress directed the Commission to conduct proceedings to establish reasonable limits on the number of subscribers a cable operator may serve – a "horizontal limit" – and the number of channels a cable operator may devote to its affiliated programming networks – a "vertical" or "channel occupancy" limit.

The 30 percent limit, set first in 1993 and modified in 1999, was challenged by Time Warner in 2001. The DC Circuit Court then remanded it back to the FCC seeking further justification. That remand has been pending six years at the Commission.

The 30 percent cable horizontal ownership limit set by the Commision will ensure that no single cable operator can create a barrier to a video programming network's entry into the market or cause a video programming network to exit the market simply by declining to carry the network. In devising a limit to achieve this goal, the Commission first determined the minimum number of subscribers a network needs in order to survive in the marketplace, and then estimated the percentage of subscribers a network is likely to serve once it secures a carriage contract.

The Commission seeks further comment on key issues relating to the appropriate vertical ownership limit – and how to address related attribution including issues:

1) The appropriate methodology for determining the limit;
2) How to define the relevant programming and distribution markets;
3) The extent to which vertically integrated cable operators have an incentive to engage in anticompetitive behavior that could lead to foreclosure of entry by unaffiliated programmers; and
4) The validity of certain academic studies and whether they establish that vertical foreclosure is occurring despite recent changes in the marketplace.

A full copy of the report will be available shortly at www.fcc.gov/mb.

Action by the Commission December 18, 2007, by Fourth Report and Order and Further Notice of Proposed Rulemaking (FCC 07-219). Chairman Martin, Commissioners Copps and Adelstein, with Commissioners Tate and McDowell dissenting. Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate, and McDowell.

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