STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN,
CONCURRING

Re: Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992.

More than a decade after the Cable Television Consumer Protection and Competition Act of 1992, questions over escalating cable rates and the impact on consumers remain. Despite these concerns, in this annual Report to Congress the Commission fails to conduct the full analysis it has performed in previous years, even as questions about the reliability of our data mount. I believe that our information collection and analysis could be strengthened and adhere more fully to the intentions of Congress in section 623(k) of the Communications Act. Given the commitment to improve our information collection and analysis in future reports, which I hope will set us on a path of providing Congress with a more complete understanding of cable rates and the effect of competition, I concur.

Congress instructed the Commission each year to collect information on cable rates and publish a statistical report. Specifically, section 623(k) directs the Commission to publish statistical reports on the average rates for basic cable service, other cable programming, and cable equipment, and to compare those rates in areas that are subject to effective competition with the rates in areas not subject to such competition.

Regretfully, this year's Report omits statistical analyses conducted in previous years. The Commission traditionally has undertaken econometric analyses to determine whether specific factors influence rates, and to measure the extent of that influence. Such analyses would isolate and account for certain factors such as the number of channels, the impact of clustering and the type of competition faced by cable operators. For example, one question relevant to today's cable environment is the effect on competition for cable from local-into-local DBS service. Analyzing this and other factors is related to our statutory mandate and would provide a more complete picture to the Congress in setting cable policy, and to the Commission in implementing it. I appreciate that the Commission will endeavor to conduct such analyses in future reports.

The Commission's methodology also could be strengthened to gather and ensure more reliable information. To meet its statutory mandate, the Commission directs certain cable operators to respond to a price survey questionnaire. Several of the questions ask the operator to estimate answers and allocate those estimates among various factors. GAO has criticized the Commission's instruction on the portion of the survey covering the cost factors underlying rate increases. In its own investigation, GAO found that cable companies made varying assumptions on how to complete the FCC survey, and even adjusted one or more cost factors in order to meet the Commission's requirement that cost and non-cost factors sum to the reported rate increase.[1] I welcome the Commission's commitment to revise its methodology to obtain more reliable information from cable operators, particularly in the critical area of programming increases.

One way for the Commission to ensure the reliability of the information presented, as well as the reliability of the Commission's survey methodology, is to conduct audits. For example, for this year's Report, cable operators attributed an average of 65.8 percent of their rate increases to programming costs, yet the Commission has not conducted even minimal audits to ensure the accuracy of this information. In rough calculations using this figure, if programming costs comprise about 30 percent of total costs,[2] and rates went up an average of 8.2 percent, this would imply that all programming costs went up an average of 17.9 percent, which appears to be an unusually high increase. Conducting even minimal audits would likely lead to a more accurate assessment of the cost factors underlying cable rate increases.

To ensure that the Commission's annual report on cable rates is providing reliable and useful information for Congress and the Commission on the causes of rate increases and on the competitive status in video markets, the Commission should gather more reliable information, conduct more statistical analyses, and consider conducting audits. Anticipating improvement in future reports, I concur with this year's Report.

---

[1] Statement of William B. Shear, Acting Director Physical Infrastructure, before the Senate Committee on Commerce, Science, and Transportation, GAO-03-742T (May 6, 2003), at 7 ("Every franchise that we spoke with said it was unclear what FCC expected for at least one of the six factors . . . 73 of the 100 franchises said that the instructions were insufficient."); at Table 1 (identifying that some companies took a standard company-wide approach to estimating programming costs while others estimated the costs for each individual franchise, and that some companies combined cost changes for all programming without separating existing from new programs).

[2] *See* Testimony of James O. Robbins, President and CEO, Cox Communications, before the Senate Committee on Commerce, Science, and Transportation (May 6, 2003).