STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: *The Commission's Horizontal and Vertical Ownership Limits; Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross Interest Policy;* MM Docket Nos. 92-264, 94-150, 92-51, 87-154, CS Docket Nos. 98-82, 96-85, Fourth Report and Order and Further Notice of Proposed Rulemaking (Dec. 18, 2007).

Our media frames our society both as an outlet for individual expression and as a reflection of our collective values, diversity, and creative voices. With so much riding on the vitality, openness, and diversity of our media, this Commission has an obligation to engage in a careful, comprehensive and thoughtful review of our ownership rules for cable systems, which serve as the primary video delivery platform for so many American consumers.

I have long expressed concerns about the negative effects of media consolidation for this country, and I have encouraged the Commission to adopt well-justified rules addressing both horizontal ownership limits for cable operators and the problems raised by growing vertical integration of programming and distribution. Although we push off decisions on many important questions of vertical ownership into the attached Further Notice, I am pleased that we finally establish in this Order sustainable horizontal cable ownership rules, as directed by Congress almost 15 years ago in Section 613(f) of the Act.

Section 613 directs the Commission to enhance "effective competition" and makes clear that Congress was concerned that unchecked growth of cable providers could increase their incentives to foreclose or engage in other anticompetitive practices against independent, unaffiliated programmers. As the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) observed, the Commission has identified important governmental objectives in setting horizontal ownership limits, including ensuring that cable operators do not preclude new programming services from reaching a critical mass of viewers necessary to survive, and preserving a diversity of information available to the public.[1] So, I support the Commission's decision to adopt a horizontal ownership cap that responds to the concerns of the D.C. Circuit.[2]

As the court noted, the market for the delivery of video programming has experienced significant changes since Congress first directed the Commission to establish a cap. It is important for the Commission to assess the impact of these developments, including the continued growth of direct broadcast satellite (DBS) and the entry of incumbent local phone providers into the video marketplace. For example, in 2001, DBS providers DirectTV and EchoStar served 16 million subscribers, while today they serve approximately 28 million subscribers, representing a growing percentage of the total multichannel video programming distribution (MVPD) market. I take seriously Section 613's admonition that we take into account the dynamic nature of the marketplace. This growth gives increasing merit to the

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[1] *Time Warner Entertainment Co. v. U.S.,* 211 F.3d 1313 (D.C. Cir. 2000) (*Time Warner I*).
[2] *Time Warner Entertainment Co. v. U.S.,* 240 F.3d 1126 (D.C. Cir. 2001) (*Time Warner II*).

argument that the horizontal ownership rules should be applied to DBS providers, as well. While Section 613 does not explicitly authorize such a cap on DBS providers, the Commission should further explore these issues in the context of its annual video competition reports and consider any appropriate recommendations to Congress.

As I have often stated, the prospect of new distribution networks holds the promise of reducing the ability of vertically integrated conglomerates from imposing an economic, cultural or political agenda on a public with few alternative choices. While the presence of DBS has reduced cable's dominance, concentration remains a concern. In 2006, the top four MVPDs served 63 percent of all MVPD subscribers. The effects of this continued concentration are reflected not only in the upstream market, but also, in the downstream MVPD market. As the Commission recently acknowledged in its most recent video competition report, DBS competition has not checked cable prices to the same extent as competition from wireline providers.

In this Order, the Commission's focus is trained particularly on the potential influence of cable operators on the upstream programming market. The Order finds that a large cable operator would have the power to significantly undermine the viability of a reasonably popular programming network by refusing to carry it, despite the competitive pressures of DBS and other providers. It is apparent that video programming delivery involves an intricate web of relationships, and this Order attempts to boil these down into an appropriate horizontal limit. Given the contentious nature of this proceeding and its history in the courts, we put our best foot forward in defense of this difficult task. Significantly, this Order embraces the consistent message I have heard from many small and independent creators of local and diverse programming, namely that they find it difficult or impossible to gain access to and carriage on cable systems. This Order is a necessary measure to prevent that problem Congress sought to address from growing more acute.