

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

Re: The Commission's Cable Horizontal and Vertical Ownership Limits (MM Docket No. 92-264); Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 (CS Docket No. 98-82); Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996 (CS Docket No. 96-85); Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (MM Docket No. 94-150); Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry (MM Docket No. 92-51); Reexamination of the Commission's Cross-Interest Policy (MM Docket No. 87-154) (Fourth Report & Order and Further Notice of Proposed Rulemaking)

Section 613(f) of the 1992 Cable Act requires the Commission to establish "reasonable limits" regarding the number of cable subscribers a cable operator is authorized to reach. In 1993, the Commission set the limit at 30%. The Commission's decision was appealed, and was reversed by the D.C. Circuit Court in 2001. In its holding, the Circuit Court found that "While a 60% limit might be appropriate as necessary to ensure that programmers had an adequate 'open field' even in the face of rejection by the largest company, the present record supports no more." Today we are again considering an Order that would set the limit at 30%.

In accordance with the D.C. Circuit Court's directive, we must examine the marketplace, and set a limit that protects competition while promoting successful business models. As the Court said, "Congress also sought to 'ensure that cable operators continue to expand, where economically justified, their capacity,' and it specifically directed the FCC, in setting the ownership limit, to take into account the 'efficiencies and other benefits that might be gained through increased ownership or control.'" In addition to increased efficiencies, we must also remember that cable operators play a crucial role in the deployment of broadband, which continues to be one of the FCC's top priorities.

In 2001, when the Court reversed the 30% cap, the landscape was much different than it is today. DirecTV and EchoStar served 16 million subscribers, or 18% of the MVPD marketplace. Today they serve almost twice that many subscribers, with 30% of the MVPD marketplace. In addition, they have exclusive rights to highly sought after programming that cannot be provided by cable operators.

In 2001, telecommunications giants like Verizon and AT&T had not yet entered the video marketplace. Today these companies are aggressively promoting their video services, and they have an enormous pre-existing customer base on which to draw. The FCC is doing all it can to facilitate entry of competitors into the video market so that consumers will have greater choice. In fact, the Commission's recent franchising decision allows entry into new markets more efficiently than in the past.

Another change in the marketplace is the explosion of online video, which offers programmers yet another means of distribution. Approximately 70% of American households subscribe to an Internet service, and in 2006, three out of five watched video online. We have recently seen ABC, CBS, NBC, and Fox offering episodes of their popular primetime shows on the Internet free of charge. Consumers are also getting video on their mobile phones. Nearly eight million were using their phones to watch video as of October 2006, and the numbers continue to grow. As viewers begin watching

programming on these devices-- at any time they choose, from anywhere in the world -- more programmers will likely turn to online distribution.

Programmers today have a greater variety of options than ever before, and are constantly trying new business models, new platforms, new ways of producing and presenting their content. Cable operators are no longer the gatekeepers they may once have been. And where programmers feel they are being unfairly denied carriage, the FCC has a complaint process in place to deal with such disputes. Therefore, it is difficult to see why, in this increasingly diverse video marketplace, the FCC would once again seek to institute a 30% limit on the size of their customer base.

While I recognize our statutory directive to set a limit on the number of subscribers a cable operator can have, I am also mindful of the importance of getting that number right. If the record in 2001 supported no less than a 60% cap, I cannot be persuaded that the record before us today does either. For these reasons, I respectfully dissent.