

December 12, 2007

Dear Members of Congress:

We write to you in strong opposition to H.R. 4307, the Consumer Freedom of Choice in Cable Act, introduced by Representative Marsha Blackburn (R-Tenn.). This legislation seeks to repeal Section 612(g) of the Communications Act which is a protective measure giving the Federal Communications Commission (Commission) additional authority to promote and ensure diversity of programming and voices upon a finding of increased cable concentration. Flaws in the Commission's data collection process have long-delayed an appropriate finding of increased cable concentration consistent with the Congressional directive. For Congress to remove this provision now would leave consumers stranded just when the Commission finally decided to defend their interests. We therefore urge you to oppose H.R. 4307.

Section 612(g), commonly referred to as the "70/70" provision, was created by Congress in the 1984 Cable Act as a protective measure, a safety valve, so to speak. Although cable was in its infancy in 1984, Congress wisely recognized the possibility of cable's potential to dominate the video distribution market, thereby harming diversity of views and programming. Thus, Congress provided the Commission with the authority to adopt rules "necessary to provide diversity of information sources" when the cable industry reaches a monopoly status. To identify this point, Congress adopted a numerical threshold which is triggered when cable is available to 70% of households and 70% of those homes subscribe to cable. In other words, only if this threshold is met, does the Commission have the authority to ensure that competition is present and cable providers offer consumers a variety of information sources over its systems.

Cable concentration has already allowed cable providers to act contrary to the interests of consumers. For example, in October 2007, the Commission unanimously held that increased cable concentration not only gives cable operators the ability and incentive to withhold vertically integrated, must-have programming from their competitors, but cable operators have in fact withheld such programming from their competitors. By withholding such programming from its competitors, cable providers either force consumers to subscribe to cable or deny consumer access to diverse sources of programming. In addition, cable providers charge such high rates for leased access, making it nearly impossible for independent, unaffiliated programmers to provide programming on cable systems. Again, this denies consumer access to diverse sources of programming.

For years, the Commission has been criticized for the insufficient and inadequate data it relies on to determine whether the 70/70 provision has been met. **While the Commission's data gathering may have been questioned, Congress's decision to ensure its constituents have access to diverse programming is not.** Today the Commission is finally implementing the Congressional directive by demanding accurate subscriber data from cable systems, which should help alleviate any concern critics may have on the Commission's data collection and use.

Despite the current negative - and untrue - rhetoric around the 70/70 provision, Congress made a deliberate decision from the inception of cable regulation to fulfilling the laudable goal of ensuring consumers' access to diverse programming. It would be a grave disservice to consumers if Congress were to withdraw this provision now that the need for it is unquestioned.

To truly ensure consumer freedom of choice in the cable market, the undersigned respectfully urge all members to oppose this ill-conceived legislation.

Respectfully Submitted,

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