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TELEVISION

Do numbers add up to reregulating cable?

The FCC may find that a federal measure of market penetration grants it more power.

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WASHINGTON — Whether the federal government will once again be able to regulate cable television comes down to a game of numbers.

The Federal Communications Commission is preparing to approve a finding, long advocated by consumer groups, showing that cable companies now dominate the pay-TV market because 70% of people with cable lines outside their homes now subscribe.

That figure, placed as a safeguard in a 1984 law deregulating cable services, triggers new powers by the FCC to impose rules ensuring diversity of programming that could lead to lower rates.

FCC Chairman Kevin J. Martin, a Republican, has been an outspoken critic of cable companies, accusing them of using their market power to increase prices and forcing consumers to pay for channels they don't watch that are bundled into programming tiers.

The FCC's first use of that power probably will be ordering large cable companies, including Time Warner Cable Inc. and Comcast Corp., to make it easier for independent programmers to lease space on their systems. Martin also could try to use the authority to force cable companies to sell channels individually, a practice known as a la carte pricing that he has strongly advocated.

But the big cable companies say the FCC shouldn't get the new power.

Several independent analyses show that cable hasn't reached the 70% threshold in the face of competition from satellite TV. The cable companies even cite the FCC's own data from last year that put their penetration at less than 60%.

"Twisting statistics in order to breathe life into this rule is simply another attempt to justify unnecessary government intrusion into a marketplace where competition is thriving and new technology is providing consumers more choices, better programming and exciting new interactive services," said Kyle McSlarrow, president of the National Cable & Telecommunications Assn., which represents cable companies.

The FCC has not yet released its findings, which are based on its own analysis of independent data. But the agency has faced criticism in the past of manipulating data to suit its policy goals, most recently on studies it commissioned as it considers lifting a ban on owning a newspaper and TV station in the same market.

Consumer groups level similar charges of statistical manipulation against cable companies, which they accuse of low-balling their subscriber data to avoid triggering the threshold.

"These guys play fast and loose with their numbers," said Harold Feld, senior vice president of the Media Access Project, a public-interest law firm. The group last year cited unexplained changes in the statistics on the cable group's website, where the total number of basic cable subscribers nationwide for 2005 changed from 73.2 million to 65.4 million within a few months.

The high stakes for the cable industry and the FCC mean federal judges probably will be the ultimate arbiters of which numbers are accurate. "The numbers have always been elusive because the government has never tracked cable subscribership. We've been trying for ages to figure out how many households have cable service," said Gene Kimmelman, vice president for federal and international affairs at Consumers Union, which supports the FCC's findings. "All of this will end up being thoroughly litigated."

Martin was unavailable for comment Monday.

The dispute revolves around the so-called 70/70 rule. Concerned that the 1984 law deregulating cable companies could lead to their domination of the TV market, Congress added a threshold that would allow the FCC to regulate the industry again. The rule applies when cable TV service with more than 36 channels is available to 70% of U.S. households, and 70% of those households subscribe.

There's no doubt that cable service is available to 70% of households; the cable association and the FCC have determined that 99% of homes have access to the service. The debate has been over the second 70: the percentage of those homes that subscribe. Satellite TV is not considered cable service because it doesn't travel over wires, but TV packages offered by phone companies are.

The FCC's last report on the issue, in March 2006, contained two staff estimates based on different samples that put cable subscriber penetration for 2005 at from 54% to 56.3% -- both down slightly from the previous year. At the time, the cable group submitted estimates from private sources, such as Nielsen Media Research, of penetration rates between 63.3% and 68.9%.

But with an alliance of consumer groups saying the 70/70 threshold had been met, the FCC began a study. The agency doesn't collect cable subscriber information, instead relying on its analysis of industry and private data.

But those figures can vary widely. In a note to investors Monday, Deutsche Bank analyst Doug Mitchelson estimated cable subscriber rates at 67% and declining.

Sanford C. Bernstein & Co. analyst Craig Moffett estimated cable's penetration at from 50% to 54%. "We don't believe any study could conceivably satisfy the 70/70 rule," he wrote.

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