FCC Moves to Place Restrictions on Cable TV
Companies Push Back Against Plan to Cap Ownership, Reduce Costs for Programmers

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The Federal Communications Commission is likely to impose a new regulation on the largely unregulated cable television industry, the first of what may be more to come.

Under a proposed rule circulating at the FCC, cable companies such as Comcast and Time Warner Cable would have to slash the price they charge smaller television programmers to lease access on spare cable channels, a move the FCC says would open up cable viewers to a wider diversity of shows.

In addition, the FCC is contemplating a national ownership cap that would prevent one company from having more than 30 percent of all cable subscribers.

FCC Chairman Kevin J. Martin would like the commission to vote on what is known as the "lease access" rule by the FCC's next meeting, scheduled for Nov. 27, and is optimistic that he has the three commission votes needed for passage. The proposed rule comes as a result of the agency's annual review of competition in the video industry.

Martin has pushed a number of actions directed toward the cable industry, notably trying to persuade cable companies to offer their channels on an a la carte basis to subscribers, instead of requiring consumers to purchase tiers of channels.

The cable companies have pushed back hard against Martin's initiatives, saying they would cripple the industry.

"In every other industry regulated by the FCC, there have been significant decreases in the price of services, such as in long-distance rates and wireless rates," Martin said in an interview last night. "But the one exception to that is cable rates, which have gone up almost 100 percent" over the past decade.

Central to the rules under consideration is a simple question of arithmetic: How many U.S. households pay for cable television?
If the number is 70 percent or higher, broad FCC regulations set in place by Congress more than 20 years ago can kick in, capping the growth of big companies and forcing open the marketplace to smaller competitors.

The 1984 Cable Act, which largely deregulated nascent cable systems to allow them to compete against the entrenched broadcast television industry, created the so-called "70/70 provision," stipulating that if cable television becomes available to 70 percent of U.S. households, and 70 percent of those who can subscribe to cable do, the industry can once again be regulated.

Martin thinks that point has come, based on studies of the cable industry by researchers independent of the FCC, he said. But not included among those studies, the chairman said, is one conducted this year by SNL Kagan held up by the cable industry. That study puts the total number of cable subscribers at 58 percent of all houses that can get cable.

Getting data that all sides can agree on has been difficult. Indeed, a 2005 FCC report put the total number of cable subscribers at 54 percent.

"We've been trying for a dozen years, and we could never gather the data" on total U.S. cable subscribers, said Gene Kimmelman, vice president for federal and international affairs at Consumers Union, a watchdog group. Kimmelman has long criticized the cable industry for raising its customers' bills at a rate that he says is at least twice that of inflation.

The cable industry says the proportion of subscribers is closer to 60 percent, but Kimmelman pointed to a recent court decision in Connecticut that ruled that cable television service offered by a phone company is designated as cable service, even though it comes over a phone line. That means that phone-based cable television service, such as Verizon's Fios, may now push the national rate of cable subscribers over 70 percent, Kimmelman said, if they are included in the studies the FCC is using.

In recent earnings statements, Verizon reported 717,000 Fios television customers and AT&T reported 126,000 television customers in its new U-Verse package.

"The [70/70] provision itself is a relic of decades old regulation and there is no basis for reviving it now; 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," Kyle McSlarrow, president of the National Cable &amp; Telecommunications Association, said in a statement.

Martin would like to see the "unbundling" of cable channels, for subscribers and for programmers. Big programmers force cable companies to buy less-popular channels in order to get more-popular ones. For instance, Viacom bundles the lightly watched Spike channel with the popular MTV channel. This is done to ensure carriage of less-popular channels on cable systems, enabling Viacom and other programmers to charge higher rates to advertisers. Some cable companies, especially smaller ones, would like to buy only the channels they want to carry.

Also, Martin would like cable subscribers to be able to buy only the channels they want. Here, he faces off against cable companies and programmers, who say such bundling is necessary to ensure a diversity of cable channels. Popular cable channels, such as USA,
effectively subsidize less-watched channels. Cable companies say they could not afford
to offer less-popular channels in an a la carte system, meaning such channels would
disappear, an assertion that consumer groups such as Consumers Union dispute.