

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 01-129

In 1992, Congress instructed the FCC to “annually report to Congress on the status of competition in the market for the delivery of video programming.”¹ I support the report we adopt today, but I write separately to express my concern with some aspects of the approach the report takes in analyzing market structure and the extent of concentration. Specifically, I question whether the relevant product market is properly defined.

The report refers repeatedly to “the market for the delivery of video programming,” acknowledging that this is the relevant market for our analysis. The Communications Act defines “video programming” as “programming provided by, or generally considered comparable to programming provided by, a *television broadcast station*.”² Accordingly, the report describes as “competitors” in the market for the delivery of video programming entities such as broadcasters, cable operators, and DBS operators. With no explanation, however, the section addressing “Horizontal Issues in the Market for Delivery of Video Programming” limits the competitive analysis to only a subset of that market—the market for the delivery of *multichannel* video programming.³ In so doing, the report eliminates broadcasters from the analysis, despite the fact that several commenters argued for their inclusion.⁴

It may be true that broadcast is not a statistically significant competitor to satellite or cable as a distribution platform, or that broadcasters and MVPDs do not compete in the same economic market, and thus the relevant market analysis *should* be limited to multichannel video programming. Nevertheless, given the plain language of the statute and the specific requests of commenters to consider broadcasters’ role in the marketplace, I would have preferred either to analyze the market for *all* video programming (and therefore include broadcasters as competitors), or to explain in a direct fashion why an analysis of only the *multichannel* video programming marketplace is more appropriate.

¹ 47 U.S.C. § 628(g).

² *Id.* at § 522(20).

³ The Report states, “The video programming market is comprised of two separate but related markets: (a) the market for the distribution of *multichannel* video programming to households, and (b) the market for the purchase of video programming by MVPDs.” *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, Eighth Annual Report, at ¶ 116 (adopted Dec. 27, 2001) (emphasis added).

⁴ *See, e.g.*, AT&T Comments at 22.