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CRS Report for Congress

Cable Television: Background and Overview of Rates and Other Issues for Congress

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Summary

Cable television is one of the oldest and most popular distribution technologies used to deliver video programming to consumers. It uses fixed coaxial or fiber-optic cables to accomplish delivery. Of the various other methods used to deliver video, only direct broadcast satellite (DBS) successfully competes with cable. It uses communications satellites to deliver signals to individual consumers. In 2005, cable television was received by 65.4 million homes, or approximately 69% of all pay television subscribers. In comparison, DBS was received by 26.1 million homes, or approximately 27.7% of all television subscribers. This report presents information on the history of federal regulation of the cable television industry and background information on cable rates and other cable industry issues. The DBS industry, cable's main competitor, is not addressed extensively in this report. The Telecommunications Act of 1996, 110 Stat. 56, P.L. 104-104, eliminated most cable rate regulation beyond the basic tier of services as of March 31, 1999. Some small cable operators were freed from regulation upon the enactment of the law, but in most cases, rates for a basic tier of services continue to be regulated. The Telecommunications Act also opened up new areas of competition between telephone companies and cable companies. This report will be updated as legislation or news events warrant.

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History of Cable Rate Regulation

The Cable Communications Policy Act of 1984, 98 Stat. 2779, P.L. 98-549, established for the first time a national regulatory policy concerning cable television communications. The act established a comprehensive cable regulatory scheme, delineating regulatory authority among the federal, state, and local levels. Increasing cable service rates and customer service complaints, however, prompted Congress to revisit the law as local authorities and consumer groups lobbied for new legislation.

On October 5, 1992, Congress passed the Cable Television Consumer Protection and Competition Act of 1992, 106 Stat. 1460, P.L. 102-385. This law addressed such issues as cable rates, must-carry rules, retransmission consent, program access, franchising authority, service standards, and more. Promulgation of regulations required by the 1992 act was done by the Federal Communications Commission (FCC). The regulations were completed in stages, according to dates set by the act.

The FCC's first set of cable rate rules implementing this act went into effect September 1, 1993. The FCC expected, on average, a 10% reduction in overall cable bills. However, "on average" did not mean that all rates decreased 10%, or even that all rates decreased. One reason was that all cable systems did not charge rates that the FCC determined to be "unreasonable." Some rates increased, and Congress and the FCC decided to address the issue of rate hikes.

After conducting a review of cable rates following issuance of its 1993 rate regulations, the FCC decided to revisit this issue. On March 30, 1994, the FCC issued rules for a second round of cable rate regulations. These new rules were intended to cut cable rates, on average, an additional 7%. No predictions were made estimating the number of cable subscribers who would see further reductions in their cable bills. The new rules took effect on May 15, 1994.

The Telecommunications Act of 1996, 110 Stat. 115, P.L. 104-104, was passed by the 104th Congress in February 1996. This act *eliminated most cable television rate regulations beyond the basic tier as of March 31, 1999*. In most cases, rates for a basic tier of services (defined as the tier that includes "over the air" broadcast stations) continues to be regulated either by local franchising authorities (LFAs) or state authorities. Most small cable operators (those serving less than 1% of all cable subscribers and having no affiliation with any company whose gross annual revenues exceed $250 million) were freed from rate regulation immediately. The FCC continues to monitor cable rate activity and issues an annual report on cable industry prices and one on competition in video markets.

Current Cable Rate Issues

According to the 2005 FCC *Annual Report on Cable Industry Prices*,[1] released in December 2006, the overall average monthly price for basic-plus-expanded basic cable service increased by 5.2% from $40.91 to $43.04 over the 12-month period ending January 1, 2005. Industry statistics on cable rates vary slightly from FCC statistics (see below), but cable companies in recent years have stated that sharply rising costs of obtaining sports and entertainment programming coupled with system upgrades caused them to increase rates for subscribers.[2]

Ongoing consumer concerns about rate increases for subscription television prompted Congress to mandate a General Accounting Office (GAO, now the Government Accountability Office) study of cable rates released in October 2003. In its report, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*,[3] GAO sought to examine the impact of competition on cable rates, assess the reliability of information contained in the annual FCC report on cable industry prices, and examine the causes of recent cable rate increases. In surveys of the industry conducted by GAO for its report, GAO concluded that the annual FCC report did not appear to provide a reliable source of information on the cost factors underlying rate increases or on the effects of competition, most notably costs associated with upgrading equipment and services. GAO recommended that FCC take steps to improve the reliability of data in its report. GAO also found that several key factors, including a 34% average increase in programing costs incurred by cable operators during the past three years — specifically a 59% average increase in sports programing costs — and cost increases from system upgrades have put upward pressure on operators to raise rates to their customers. The GAO report also discussed the option of converting cable system pricing to à la carte (per channel) pricing instead of the current tiered system. It noted that despite the customer benefit of greater choice, à la carte pricing could impose additional equipment costs on the customer and alter the current economics of the industry, especially how cable providers generate advertising revenues.

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[1] U.S. Federal Communications Commission, 2005 *Annual Report on Cable Industry Prices*, December 27, 2006, FCC 06-179. The 2005 report and previous years' reports are available at [http://www.fcc.gov/mb/csrptpg.html].

[2] The FCC uses surveys of average monthly rates for cable programming services at the basic service tier (BST) and the cable program service tier (CPST), also known as "expanded basic," as noted in the 2002 FCC *Annual Report on Cable Industry Prices*.

[3] *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8, October 10, 2003. Available at [http://www.gao.gov/new.items/d048.pdf]

Table 1. Annual Cable Rates Data
(average monthly "expanded basic" rate)

2006	$41.17	**1997**	$26.48
2005	$39.96	**1996**	$24.41
2004	$38.23	**1995**	$23.07
2003	$36.59	**1994**	$21.62
2002	$34.52	**1993**	$19.39
2001	$31.58	**1992**	$19.08
2000	$30.37	**1991**	$18.10
1999	$28.92	**1990**	$16.78
1998	$27.81	**1989**	$15.21

Source: National Cable & Telecommunications Association.

Notes: NCTA [http://www.ncta.com] does not set the content of tiers or channel packages of its members. Basic service tiers (BSTs) are defined as "... basic program services distributed by a cable system for a basic monthly fee. Basic monthly services include one or more local broadcast stations, non-pay networks and local origination programming." Service tiers beyond the basic tier are required by the FCC to include basic tier services and generally include a package of pay channels as negotiated in the local franchise agreement between the local franchising authority and the cable system provider. Additional price increments beyond basic offerings are considered a tier. Pay channels beyond basic tier services are no longer regulated by the FCC, as of Mar. 31, 1999.

The Current Cable Market

According to the FCC's *Twelfth Annual Report on Competition in Video Markets*, released in March 2006,[4] approximately 65.4 million homes in the United States, or 69.4% of all Multichannel Video Program Distributor (MVPD) television homes, subscribed to cable television as of June 2004. As defined by the FCC, an MVPD distributor is "an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming."[5] Such entities include cable operators, direct broadcast satellite (DBS) services, and — in much smaller numbers — subscribers to five other technologies that deliver programming. Subscriptions to DBS in recent years have increased rapidly. As of June 2005, DBS subscribers numbered more than 26.1 million, or 27.7% of all MVPD subscribers. MVPD (cable and noncable) subscribers total approximately 94

[4] The FCC *Twelfth Annual Report on Competition in Video Markets* as well as previous years' reports and current and previous years of the aforementioned FCC reports on cable industry prices are available at [http://www.fcc.gov/mb/csrptpg.html].

[5] See 47 C.F.R. § 76.1000(e) for definition of MVPDs.

million homes.[6] The other five technologies (MMDS, HSD, PCO, BSP, and OVS) represent the approximately 2.9% of remaining MVPD subscribers.

As a result of the Telecommunications Act of 1996, telephone companies can provide video services in direct competition with the local cable television company and in certain cases may merge with the local cable company. Cable television companies are also able to offer local phone service and broadband Internet services (including such services as "Voice Over Internet protocol" [VoIP]). Although individual consumers will presumably have more choices as a result of competition in the developing communications market, particularly from satellite services such as DBS, forecasts of what will happen in this new and complex environment are conflicting and uncertain.

Top Cable and DBS Systems

Table 2. Top 10 Multiple System Operators

(by number of subscribers)

1. Comcast (21.4 million) 2. DirecTV (15.3 million) 3. Echostar Comm. Corp. (Dish Network) (12.2 million) 4. Time Warner Cable (11.0 million) 5. Charter (5.9 million)	6. Cox (5.4 million) 7. Adelphia (4.8 million) 8. Cablevision (3 million) 9. Bright House (2.2 million) 10. Mediacom (1.4 million)

Source: National Cable & Telecommunications Association [http://www.ncta.com] and *Broadcasting & Cable Yearbook 2007.*

Program Access Rules

Many providers of cable television programming are owned by or affiliated with cable television operators. Concerns that such programmers may only provide their programming to their corporate affiliates prompted Congress to approve a provision in the Cable Act of 1992 addressing "program access" concerns. Program access provisions prevent the use of exclusive contracts between cable operators and their affiliated programmers for satellite delivered programing. The FCC was instructed in the statute to reexamine the continuing need for the prohibition after it had been in effect for 10 years.

The prohibition was set to expire on October 5, 2002, but the FCC issued a Report and Order on June 13, 2002, extending for five years (until 2007) the statutory prohibition. The FCC found that the prohibition continues to be necessary to

[6] *Twelfth Annual Report on Video Competition*, Appendix B, Table B-1, "Assessment of Competing Technologies." This report is available at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-11A1.pdf]

preserve and protect competition and diversity in the distribution of video programming.[7]

Broadband Cable Modem Service

Broadband or high-speed Internet services can be offered through a series of technologies including cable, digital subscriber lines (DSL) provided by telephone carriers, satellite television, fixed wireless, and others. Cable television companies offer broadband services via a cable modem. Classifying broadband cable service as an "information service," a "telecommunications service," or as a combination of the two has important regulatory implications. Generally, classification as an information service would subject cable broadband services to minimal federal regulation and no requirement that they provide open access to their systems to competing Internet Service Providers (ISPs). Classification as a telecommunications service could subject cable broadband services to common carrier regulation and could require provision of open access to competing ISPs. Recently, the courts and the FCC have come to different conclusions regarding classification of these services.

In a ruling on March 14, 2002, the FCC ruled that cable modem service is properly classified as an interstate information service. The ruling further determined that cable modem service is not a "cable service" and that cable modem service does not contain a separate "telecommunications service" and is not subject to common carrier regulation (the rules that govern telephone providers).[8]

However, in an opinion filed on October 6, 2003, the United States Court of Appeals for the Ninth Circuit came to a different conclusion regarding the classification of cable modem services. The court ruled in *Brand X Internet Service v. FCC* that cable modem services are legally in part a telecommunications service, which could lead to the requirement that cable operators open their lines to competing Internet service providers.[9] This decision *vacated in part the FCC March 2002 declaratory order*, which classified cable modem service as exclusively an information service free from the rules of access governing telecommunications services. The FCC appealed the Ninth Circuit's decision, but the appeals court denied the FCC's petition for a full court review on March 31, 2004. The FCC and the Solicitor General of the United States then filed an appeal with the U.S. Supreme Court.

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[7] A copy of the ruling is available on the FCC website at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-176A1.pdf].

[8] A news release summarizing the FCC decision is available on the FCC website at [http://ftp.fcc.gov/Bureaus/Cable/News_Releases/2002/nrcb0201.html].

[9] See *Brand X Internet Service v. FCC*, 345 F. 3d 1120 (2003). The decision can be found at [http://www.law.cornell.edu/supct/html/04-277.ZO.html].

On June 27, 2005, the high court overturned the Ninth Circuit's decision, ruling that cable companies do not have to open their lines to ISPs. In the 6-3 decision,[10] the court basically supported the FCC's decision to classify cable modem service as an information service.

Additional Resources

Selected Online Resources

U.S. Federal Communications Commission. "Regulation of Cable TV Rates." FCC Consumer Facts. September 2006. [http://www.fcc.gov/cgb/consumerfacts/cablerates.html].

This two-page fact sheet provides brief information on state and local franchising authorities' cable television responsibilities, including the regulation of rates for basic service tiers.

——. "Choosing Cable Channels." FCC Consumer Facts. December 2006. [http://www.fcc.gov/cgb/consumerfacts/cablechannels.html].

This two-page fact sheet explains how cable channels are packaged and distributed to consumers. It includes a brief description of tiers, "a la carte," and pay-per-view programming.

——. "General Information on Cable TV and Its Regulation." Fact Sheet. June 2000. [http://www.fcc.gov/mb/facts/csgen.html].

This extensive fact sheet presents background information on the history and evolution of the cable industry in the United States, including the evolution of parts of the Communications Act of 1934 that affect cable television, discussion of issues such as must-carry regulations, and information on the regulation of cable television by state and local authorities, including local franchising authority agreements and customer service guidelines. Additional fact sheets on specific cable TV topics are available at [http://www.fcc.gov/mb/facts/#cable].

——. "FCC Role in Cable Rate Regulation Ends." Consumer Alert. March 1999. [http://www.fcc.gov/Bureaus/Miscellaneous/Factsheets/cblrate.html].

This two-page notice details the end of federal regulation of expanded basic cable rates as of March 31, 1999, which was mandated by the Telecommunications Act of 1996, P.L. 104-104.

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[10] *National Cable & Telecommunications Association v. Brand X Internet Services,* 125 S. Ct. 2688 (U.S., 2005). The decision is available at [http://www.supremecourtus.gov/opinions/04pdf/04-277.pdf].

Selected CRS Products

CRS Report RL33542. *Broadband Internet Regulation and Access: Background and Issues*, by Angele A. Gilroy and Lennard G. Kruger.

CRS Report RL32398. *Cable and Satellite Television Network Tiering and 'a la Carte' Options for Consumers: Issues for Congress*, by Charles B. Goldfarb.

CRS Report RL31260. *Digital Television: An Overview*, by Lennard G. Kruger.

CRS Report RS22217. *The Digital TV Transition: A Brief Overview*, by Lennard G. Kruger and Linda K. Moore.

CRS Report RS21768. *Satellite Television: Reauthorization of the Satellite Home Viewer Improvement Act (SHVIA) — Background and Key Issues,* by Marcia S. Smith.

CRS Report RL33338. *The FCC's 'a la Carte' Reports*, by Charles B. Goldfarb.

CRS Report RL32589. *The Federal Communications Commission: Current Structure and its Role in the Changing Telecommunications Landscape,* by Patricia Moloney Figliola.