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# F.C.C. Chief Seeks Votes to Tighten Cable Rules

**By STEPHEN LABATON**

WASHINGTON, Nov. 25 — The head of the Federal Communications Commission is struggling to find enough support from a majority of the agency's commissioners to regulate cable television companies more tightly.

The five-member commission is set to vote on Tuesday on a report, proposed by Kevin J. Martin, the agency's chairman, that would give the commission expanded powers over the cable industry after making a formal finding that it had grown too big.

After news reports this month that Mr. Martin supported the finding — along with the commission's two Democrats — the cable industry heavily lobbied the commission and allies in Congress to kill the proposal. Those efforts may be paying off.

One of the Democrats, Jonathan S. Adelstein, recently joined with one of the Republican opponents of the measure to try, unsuccessfully, to postpone the vote, commission officials said. Mr. Adelstein complained that Mr. Martin has been unfairly rushing other commissioners to complete the finding. Mr. Adelstein has told people involved in the proceeding that he was unsure whether there was an adequate basis for concluding that the cable companies had become too dominant. Without Mr. Adelstein's support, Mr. Martin's proposal could fail.

A defeat would be a major blow to consumer groups and a setback for Mr. Martin, who has led the effort for tighter regulation. Last month, the commission approved his proposal to strike down exclusive contracts for a particular cable company to serve an apartment building. And last December, the agency approved a proposal to force municipalities to move more swiftly on applications by phone companies to offer rival video service to the cable companies.

The rule striking the exclusive contracts is expected to be challenged soon in court by the large cable companies. Last year's measure has already been challenged in a lawsuit filed by cities and the cable industry.

The lobbying against the latest measure by the cable companies intensified this month after senior commission officials said that the agency was planning to conclude as part of its annual report on the state of the video services market that it has broad new regulatory authority over the cable industry under the so-called 70/70 rule of the Cable Communications Act of 1984.

Under that provision, the agency may adopt rules necessary to promote "diversity of information sources" once the commission concludes that cable television is available to at least 70 percent of American households, and at least 70 percent of those households actually subscribe to a cable service.

Officials and consumer groups said that the 70/70 cable television finding would provide the legal basis for the commission to adopt rules in the coming weeks and months aimed at increasing programming and reducing rates for consumers. They include a cap that would prevent the nation's largest cable company, Comcast, from growing.

At the hearing this week, the agency is expected to take up a number of other issues that have raised objections from the cable industry.

One would significantly lower the rates that cable operators can charge to lease channel space to independent programmers, cutting the price from 40 cents a subscriber to 10 cents. A second proposal would make it easier for independent programmers to bring complaints against cable operators in disputes over how much the programmers should be receiving. The proposal could be helpful to such programmers as the NFL Network and the Hallmark Channel, which have been in disputes with the cable companies.

In each instance, Mr. Martin needs two other votes from the five-member commission to prevail. But in recent days the two other Republican commissioners, Deborah T. Tate and Robert M. McDowell, have questioned the data to justify the 70/70 finding. And Mr. Adelstein has expressed skepticism of the numbers originally used as the basis for the finding. Along with Mr. McDowell, Mr. Adelstein unsuccessfully lobbied Mr. Martin to delay the vote on the report, commission officials said.

Mr. Adelstein has complained that he was being forced to vote on the issue before the agency has adequately examined the numbers, an argument that has also been made by the cable industry.

Mr. Adelstein has maintained that Mr. Martin was trying to rush the cable finding through the agency just as Mr. Martin was also trying to move quickly to loosen another media ownership rule, which now restricts companies from owning newspapers and broadcast stations in the same city, unless they have an exemption or were doing it before the rule was promulgated. In the meantime, Mr. Adelstein has raised questions about the data being used to justify invoking the 70/70 rule.

“There is a manic attempt to finish an aggressive number of controversial decisions on short notice,” Mr. Adelstein said in an interview on Sunday. “Longstanding procedures were short-circuited on issues that deserve more thoughtfulness. The reason for the push is to provide quick cover for the media consolidation agenda.”

Consumer groups, which had been counting on Mr. Adelstein’s support and have considered him an ally on many issues, said they would feel betrayed if he were to vote against the 70/70 proposal.

“The general suspicion is that Adelstein is more friendly to cable companies than he will admit, and the only question is whether he will find an excuse to not vote the issue,” said Andrew Jay Schwartzman, president of the Media Access Project, an advocacy organization that has been a leader in the effort to promote the 70/70 finding. “He originally seemed sympathetic to what we were saying. The question now is whether he will try to hide behind process and the doubts that have been raised by industry.” The industry’s largest trade group, the National Cable and Telecommunications Association, maintains that although more than cable is now available to more than 70 percent of homes, far fewer than 70 percent of those homes are actual subscribers.

“We don’t even regard it as a close call,” said Kyle McSlarrow, president and chief executive of the association. He said that the cable companies were concerned that a finding of the sort advanced by Mr. Martin could lead to an “incredibly expanded interpretation” of the law by the commission to justify sweeping regulations, when in fact the law does not actually give the agency such authority.

Consumer groups dispute the industry’s figures and have presented studies that they say justify Mr. Martin’s proposal.

Last week a majority of the Republicans on the House Energy and Commerce Committee sent a letter to the commission attacking