Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

CS Docket No. 96-133

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

Cynthia B. Brumfield
Vice President, Research and
Policy Analysis

Daniel F. Basnight
Legal Staff

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk
1724 Massachusetts Avenue, NW
Washington, D.C. 20036
(202) 775-3664

Counsel for the National Cable
Television Association, Inc.

July 19, 1996

TABLE OF CONTENTS

RECEIVED
JUL 1 9 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

CS Docket No. 96-133

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA") hereby submits its comments regarding the Commission's third annual report to Congress on the status of competition in the multichannel video programming market. NCTA is the principal trade association of the cable television industry. Its members include the owners and operators of cable systems serving 80 percent of the nation's cable television subscribers; over 100 program networks that now command 50 percent viewership in cable households; equipment manufacturers and others affiliated with the cable television industry.

INTRODUCTION AND SUMMARY

In its Notice of Inquiry ("NOI"), the Commission seeks information to fulfill its statutory obligation under the 1992 Cable Act to report to Congress on the status of competition in the delivery of video programming.[1] The third annual report will update the Commission's

---

1 Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (codified as amended at 47 U.S.C. §§ 521, 548(g) (1992)).

assessment of the status of competition and report on changes in the competitive environment since the *1995 Competition Report* was submitted to Congress. In particular, the Commission seeks comment regarding its conclusions in the *1995 Competition Report*, current information and data regarding changes over the past year, and fact-based projections for the future development of competition in the video programming services market.

Competition to cable television has accelerated in the year since the *1995 Competition Report*. Competition from DBS is already intense. Dish prices have fallen. DBS providers are implementing expensive advertising campaigns to make consumers more aware of the availability of their services. Competition from alternative technologies, such as digital MMDS, is projected to increase exponentially. Telephone companies have made substantial investments in MMDS systems. Broadcast television continues to be a powerful competitor, as witnessed by its robust advertising revenues.

Changes have also occurred with respect to horizontal and vertical integration in the cable industry. While horizontal integration has increased slightly since the *1995 Competition Report*, decline in vertical integration is imminent. The last major regulatory hurdle has been removed from the sale of the Viacom systems to TCI, so the Viacom cable networks will no longer be affiliated with a cable operator.

At the same time that these changes are occurring in cable's "core" business, the industry is transforming its nearly universal network to provide the public with new competitive communications and information services. We discuss the industry's current and anticipated provision of advanced cable and telecommunications services in these comments and in a detailed Appendix attached hereto.

Finally, as the Commission requested, we propose a number of recommendations to the Commission on promoting a competitive marketplace. Specifically, the Commission should adopt uniform national rules on interconnection with local telephone companies. It should adopt final rules on the new effective competition test and it should act expeditiously on the pending petitions seeking deregulation under the new test.

In the *1995 Competition Report*, the Commission found that some progress toward a competitive marketplace had begun.[2] Specifically, the 1995 Report cited: the doubling of subscribership to direct broadcast service (DBS) and the decline in the price of DBS receiving equipment;[3] a 33 percent growth in wireless cable subscribers and substantial investments by several local exchange carriers (LECs) in wireless cable operations;[4] a 100,000 subscriber growth in satellite master antenna television (SMATV) systems, bringing the total number of SMATV subscribers to almost a million; and technological advances that will increase the quantity and types of multichannel video program distributor (MVPD) competitive program offerings.[5]

These trends, particularly the growth of DBS, have greatly accelerated in the year since the publication of the *1995 Competition Report*. However, by far the most significant development since the publication of the *1995 Competition Report* has been the passage of the

---

[2] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Report, 11 FCC Rcd. 2060, 2064, ¶ 9 (1995) (*1995 Competition Report*).

[3] Id. at 2065.

[4] Id. at 2066.

[5] Id.

Telecommunications Act of 1996 ("the 1996 Act").[6] This landmark legislation removed most of the remaining barriers to vigorous competition in the delivery of video programming.

- It discarded regulation in favor of market-based competition.
- It encouraged facilities-based competition in the provision of video and telecommunications services.
- It removed state and local barriers to cable television companies providing local telephone service.[7]
- And, of particular importance to cable television companies, it eliminated the cross-ownership ban on telephone companies providing video programming in their own service areas.[8]

The Commission seeks comment regarding the impact of the 1996 Act on competition in the video marketplace. Because the 1996 Act has not been fully implemented, it is generally too early to assess its impact on most aspects of competition for the provision of video services. However, the activity in the marketplace since its passage reflects well-financed preparations by cable's current and potential competitors for a new era of video competition.

The significant competitive developments already underway at the time of publication of the *1995 Competition Report* plus the revolutionary implications for video competition in the 1996 Act mean that the era of intense competition in the provision of video programming has begun.

---

6 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 1996) ("the 1996 Act").

7 Id., Section 302(b)(1).

8 Id.

I. COMPETITION TO CABLE TELEVISION IS STRONG AND IS ACCELERATING

Competition to cable television takes the form of direct broadcast satellite services (DBS), microwave-based wireless cable systems (MMDS), telephone switched video, C-band television or home satellite dish (HSD) systems and broadcast television services. DBS is the fastest-growing consumer electronics product in history Telephone companies -- including the huge Regional Bell Operating Companies ("RBOCs") -- are implementing their plans to construct traditional cable systems or to take advantage of the new option introduced by the 1996 Act, open video systems (OVS), in their own telephone service areas. They also are investing heavily in MMDS facilities. Their strong brand identification and significant scale economies in their geographic areas will make them formidable video competitors.

Cable television companies are already feeling the effects of competition from DBS, MMDS and HSD in the form of lost subscribers and stagnant premium television revenues. The passage of the 1996 Act assures the entry of powerful new competitors, the regional and local telephone companies, into the video programming delivery business. Several regional telephone companies have hastened their entry into the business by investing in MMDS systems.

Both telephone and DBS are benefited by the "program access" provisions of the 1992 Cable Act. These require vertically-integrated satellite cable programmers to offer their services to all distributors on non-discriminatory terms and conditions. This allows new market entrants, without any investment or effort on their part, to take advantage of the recognized consumer brand names created by the cable industry through its programming investments and substantial marketing efforts. This regulatory requirement -- unprecedented in the context of the launch of any earlier commercial venture -- alone guarantees a significant competitive benefit to cable's competitors.

A. Competition from Alternative Technologies is Projected to Increase

During the decade 1996-2005, the growth in cable television households served by traditional cable operators is expected to be slowed by new competitors. These cable television households are expected to rise from 62.1 million to only 63.3 million in ten years.[9]

Breakthroughs in digital compression technology will bring new channel choices and program flexibility to television viewers. All competing video providers, whether wired or wireless, will integrate digital technology to enhance their program offerings, both by increasing channel capacity and enhancing video and audio resolution.

As a result of these and other factors, many industry analysts project substantial growth for cable's competitors. Most observers expect rapid growth in subscribers for both telephone switched digital video and telephone MMDS. Paul Kagan Associates projects that traditional cable operators' video-delivery business will grow modestly for a while, but the plethora of new competitors will soon retard cable's subscriber growth.

Kagan projects that households subscribing to a service competitive to cable will grow from 6.4 million in 1996 to 31.1 million in 2005, as television households grow from 95.9 million to 106.5 million. As Exhibits 1 and 2 indicate:

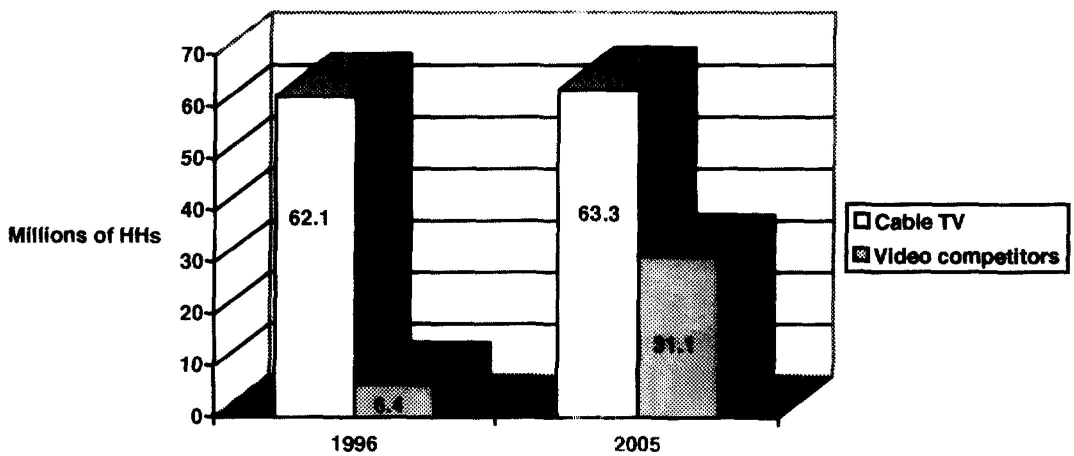
- The total number of households subscribing to cable's competitive technologies is projected to quintuple by the year 2005

[9] Paul Kagan Associates projection, published in CABLE WORLD, June 17, 1996 at 1

- The market share of cable's competitors is expected to nearly quadruple to 32 percent of the total multichannel video market by the year 2005.
- Concomitantly, cable's market share is expected to drop from 91 percent to 68 percent.

Exhibit 1

Projected Growth of Cable's Competitors
1996-2005



Video competitors include digital MMDS, telco (HFC), DBS, analog MMDS, SMATV and C-band satellite.

Derived from: Paul Kagan Associates, published in CABLE WORLD*, June 17, 1996 at 1*

Exhibit 2

**Cable TV Reduction in Video Programming Market Share
1996-2005**

 # Others include analog MMDS, SMATV and C-band satellite.

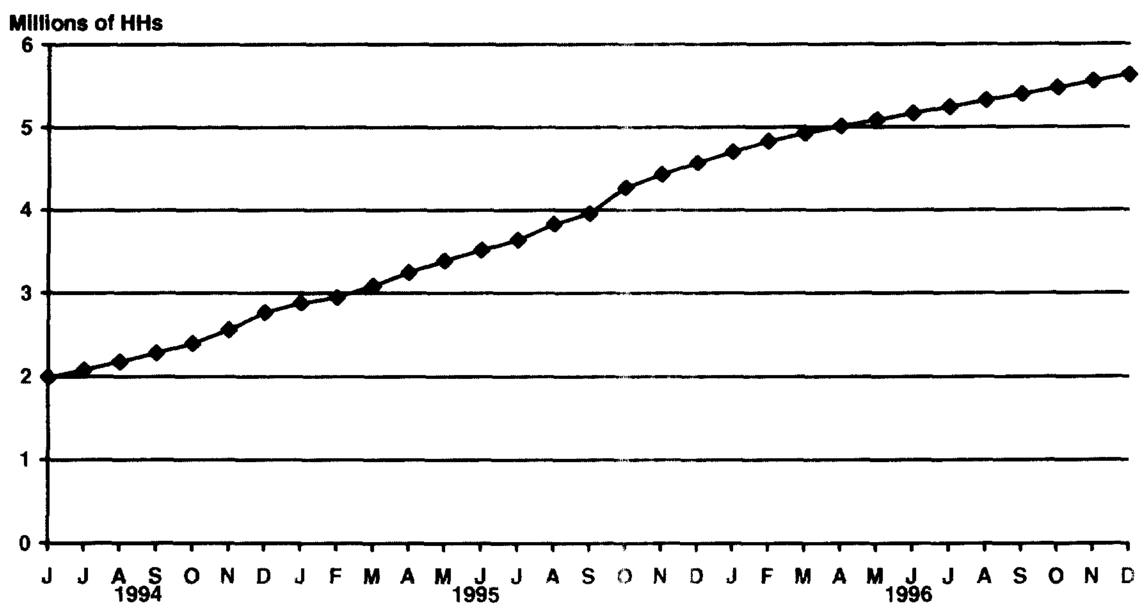
Derived from: *Paul Kagan Associates, published in* CABLE WORLD, *June 17, 1996 at 1.*

B. DBS Is Now Providing Intense Competition to Cable

DBS systems are the fastest-growing consumer electronics product in history.[10] Cable companies are feeling the effects in the form of lost subscribers, downgrades to the lowest tier of cable service containing the local broadcast signals and reduced demand in line extensions. Because DBS was able to launch with digital technology, it features enhanced picture resolution, expanded channel capacity, a sophisticated navigation device and an augmented array of pay-per-view offerings at convenient times. These product features have siphoned some of the most affluent, innovative consumers away from cable television. Because of the investment required for home receiving equipment, these lost customers will be difficult to reclaim.

EXHIBIT 3

Growth in DBS 1994-1996



Source: Satellite Broadcasting and Communications Association, Rocky Mountain News.

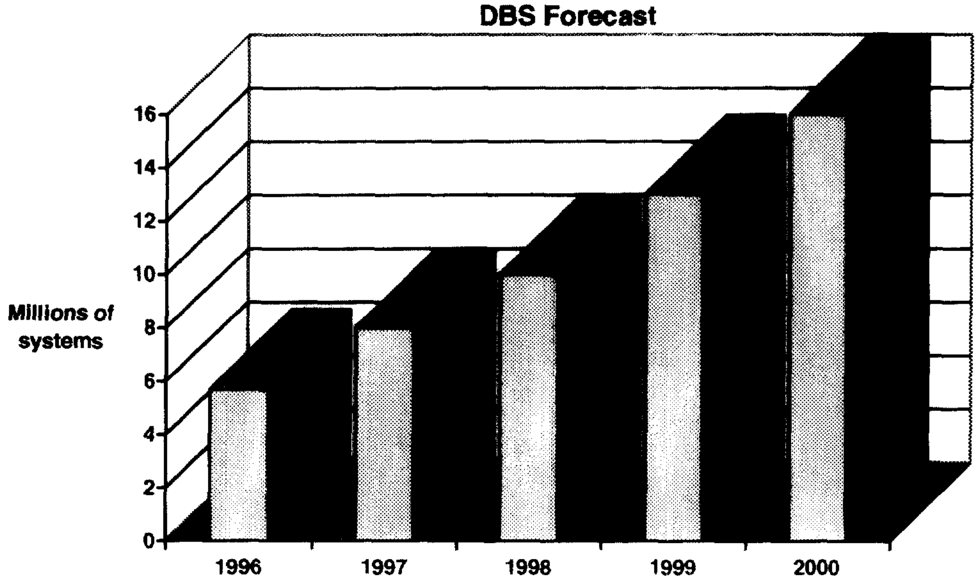
Note: May-December 1996 are projected at the average rate of growth January-April 1996. Includes Primestar.

---

[10] Brian Deagon, *Is Cable Industry Ready for Satellite TV Assault?*, INVESTOR'S BUSINESS DAILY, February 26, 1996.

Carmel Group, which publishes a DBS newsletter, projects a 170 percent rise in DBS subscribers to 5.7 million by the end of this year.[11] This is the same number which can be derived by projecting the growth rate from the first four months of 1996 to the last eight months of 1996, as Exhibit 3 has done. Carmel Group projects that DBS will almost triple to 16 million subscribers by 2000.[12]

Exhibit 4
DBS Forecast



Source: Carmel Associates in Investor's Business Daily, February 26, 1996

Although DBS programmers are assured access to cable programming through the program access provisions of the 1992 Cable Act, cable does not have reciprocal access to DBS programming. As a consequence, DBS programmer DirecTV has made exclusive program arrangements for packages of NBA basketball and NFL football games that are extremely

---

[11] Id.

[12] Id.

attractive to cable's sports-oriented subscribers. Furthermore, DBS companies are well-funded by major corporations and will remain viable in the long term. DirecTV's parent company, GM/Hughes Electronics, has annual revenues of approximately $14 billion and has already committed over $700 million to DirecTV over the past decade. AT&T paid $137.5 million for a 2.5 percent stake in DirecTV, with an option to increase its investment to 30 percent over five years.[13]

AT&T has entered into co-operative marketing agreements with both DirecTV and USSB. AT&T has an estimated 90 million telephone and credit card customers and is a recognized leader in the marketing field.[14] AT&T will distinguish itself from retail sellers of satellite programming by offering rebates and special features for people who also use its long-distance service.[15] AT&T has used a similar bundling technique to market its new Internet access service, offering lower rates for customers who use AT&T for both long distance and access to the Internet.[16] AT&T will also offer 0 percent financing on a dish purchase for people who charge the dish with the AT&T Universal credit card.[17] Members of the AT&T True Rewards program can redeem their points toward a DirecTV dish and installation.[18] Eddy

---

[13] Shira McCarthy, *AT&T Sweeps into Video Market with DirecTV Deal*, TELEPHONY, January 29, 1996.

[14] Martin J. Moylan, *USSB Signs Marketing Pact with AT&T* ST. PAUL PIONEER PRESS, March 26, 1996.

[15] Evan Ramstad, *AT&T Venturing into the Direct-Satellite TV Business*, CHARLOTTE OBSERVER, March 26, 1996.

[16] Id.

[17] Id.

[18] Id.

Hartenstein, president of DirecTV, claims that AT&T's marketing push will help DirecTV reach 3 million subscribers by the end of 1996.[19]

EchoStar Communications has made the most direct effort to attract cable television subscribers. EchoStar is offering a $199 dish and equipment package to customers that purchase an annual programming subscription and targeting its marketing efforts at TCI systems which raise rates during the summer of 1996.[20] EchoStar's marketing and promotional expenses for 1996 are expected to range between $50 million and $60 million.[21]

Other DBS dish manufactures have also reduced prices. By June 1996, the retail price of RCA's DSS unit had fallen to $399.[22] Now that RCA's DSS sales have exceeded one million units, their exclusive manufacturing agreement with DirecTV has expired. This means that other dish manufacturers are free to enter the market and further drive down prices. Sony has already entered the market to manufacture dishes that will receive DirecTV and USSB. Sony will soon be joined by eight more manufacturers in the business of making receivers and 18-inch satellite dishes.[23]

However, it is no longer even necessary to purchase a dish up front to have DBS. DirecTV now offers a financing package which makes both DBS equipment and programming available to consumers for under $30 per month.

---

19 Id.

20 K.C. Neel, *DBS Providers Take Aim At Cable Subs*, CABLE WORLD, June 10, 1996 at 1.

21 Id. at 8.

22 Id. at 8.

23 Bill Menezes, *Dishing Out Entertainment*, DENVER-ROCKY MOUNTAIN NEWS, June 16, 1996.

Other entities are expected to enter the DBS market, including a venture between MCI and News Corp.[24] In February, MCI agreed to pay $682 million in the government auction for DBS frequency slots.[25] The DBS economic model has a strong lure for market entrants, because it costs virtually nothing to hook up a new subscriber. The cost of wiring a neighborhood for traditional cable TV is about $1,500 per home, compared with only $5-$10 for DBS.[26] This means that a DBS service can break even with only around three million subscribers.[27]

DBS companies are already gearing up for a marketing war. DBS companies are projected to spend a combined $300 million on advertising this year alone.[28] A new entrant, Alphastar, has enlisted Amway distributors to sell its service door-to-door.[29] USSB will use its investment from Dow Jones & Co. to launch a new advertising campaign on movie theater screens, featuring a pulsating satellite whizzing through a universe of drab satellites.[30]

---

[24] Mark Robichaux, *As Satellite TV Soars, Big Firms Crowd the Skies*, THE WALL STREET JOURNAL, March 11, 1996.

[25] Brian Deagon, *Is Cable Industry Ready for Satellite TV Assault?*, INVESTOR'S BUSINESS DAILY, February 26, 1996.

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

C. Competition from Telephone Company-Delivered Video Programming is Here

The Telecommunications Act of 1996 eliminated the bar on telephone companies competing with cable in video services.[31] This legislation unleashed extraordinarily powerful competitors to the cable television industry. The telephone industry has ready sources of capital, tremendous market power, and ubiquitous access to telephone customers for marketing purposes.

Telephone companies are now offering video services in direct competition with cable on a broad basis. Ameritech launched an 81-channel service in direct competition with the Time Warner system in Columbus, Ohio on June 13, 1996. This is Ameritech's largest cable market to date, comprising 600,000 people.[32] Ameritech now has 20 cable franchises across the Midwest with over 1.2 million homes passed.[33] Over the next few years, Ameritech plans to invest $4 billion in the cable TV business.[34]

Some early marketing results of telephone cable systems have been impressive. Sprint Corporation's video dialtone trial in Wake Forest, North Carolina captured 65 percent of the market base in the territory served by incumbent Cablevision Industries, using aggressive pricing and a wide choice of program offerings.[35]

---

31 Telecommunications Act of 1996, Section 302 (b)(1)

32 Alan Breznick, *Ameritech Turns On Columbus, Ohio*, CABLE WORLD, June 17, 1996, at 8.

33 *Ameritech Receives Two More Competitive Cable Franchises*, July 3, 1996, *available in* Prodigy Web Browser (http://www.cable-online.com/73amer.htm)

34 Ron French, *Ameritech Offers Cable TV in Troy*, DETROIT NEWS. April 24, 1996.

35 Fred Dawson, *Sprint Corp. Boasts 65% Base In N.C VDT Trial*, MULTICHANNEL NEWS, January 29, 1996, at 3.

To accelerate their entry into video, regional telephone companies are investing substantial amounts of money in wireless MMDS services. These investments are having immediate impacts on cable television companies as the newly-invigorated MMDS services intensify their programming and marketing efforts Just this month, the Commission approved digital conversion for wireless cable.[36] Commission Chairman Reed Hundt referred to the ruling as a "veritable gold mine for video programming distributors."[37] Chairman Hundt continued that "[the ruling] will, I believe, further accelerate the ascent of wireless cable as a robust alternative to wired cable service in the United States."[38]

Bell Atlantic will launch the first Tele-TV programming package over wireless cable in the Norfolk-Portsmouth-Virginia Beach area of Virginia early in the first quarter of 1997. The service will be 120 digital channels. At launch the service will be available to 400,000 homes.[39]

Perhaps what is most remarkable about the Virginia wireless system is how rapidly it was constructed. It took only three months to build the system from scratch.[40] The speed with which a wireless system can come into being has significant competitive implications for cable operators.

---

36 *Wireless Cable Gets FCC Approval for Digital Conversion*, COMMUNICATIONS DAILY, July 11, 1996 at 3.

37 Joe Estrella, *FCC Clears Way for Wireless Evolution*, MULTICHANNEL NEWS, July 15, 1996 at 2.

38 Id.

39 Alan Breznick, *Bell Atlantic Ready to Launch Tele-TV Package in Virginia*, CABLE WORLD, June 17, 1996, at 8.

40 Dana Cervenka, *MMDS Standing Tall on Digital Technology, RBOC $$*, COMMUNICATIONS ENGINEERING AND DESIGN, July 1996, at 58

The Bell Atlantic launch in Virginia provides an example of the telephone companies' resolve to enter into head-to-head competition with cable television companies immediately. Several regional telephone companies, such as Bell Atlantic, have modified their business plans away from wired cable television systems to wireless transmission in order to conserve capital costs and enter the market more quickly.

Tele-TV will use its digital technology to offer subscribers programming innovations such as "channelettes." "Channelettes" are digital niche channels of text, still photos, audio and some full-motion video that resemble World Wide Web multimedia pages. Channelettes will carry local traffic reports, school and government office closings, movie listings, restaurant guides, stock prices, weather forecasts and other locally-customized information. By early 1998, Tele-TV will be able to bunch 30 "channelettes" in the bandwidth of a single audio channel.[41] These programming innovations, made possible by digital technology, provide valuable product differentiation and will give telephone wireless cable an advantage until cable television companies introduce digital set-top converters on a broad basis.

The Virginia Bell Atlantic launch is part of a larger agreement between Bell Atlantic/NYNEX and CAI Wireless Systems.[42] The agreement covers 13 markets and 12 million line-of-sight homes.[43] CAI Wireless will design, construct and maintain the digital networks, while leasing the spectrum it holds licenses for to its telco partners.[44] Bell Atlantic

---

41 Alan Breznick, *Tele-TV Plans Localized Channelettes*, CABLE WORLD, June 10, 1996, at 20.

42 Cervenka at 58.

43 Id.

44 Id.

and NYNEX will market the service, provide customer service and handle the customer premises installation and technical service.[45]

BellSouth is also active in the wireless cable market. It submitted a $12 million bid for the license to provide wireless cable TV in the greater New Orleans area.[46] BellSouth won the license and will begin providing service by mid-1997. At launch, the service will provide more than 100 channels.[47] Programming will be provided by the Americast joint venture, owned by Disney, GTE, Ameritech, SBC Communications and BellSouth.[48]

On the West Coast, Pacific Telesis is active in digital MMDS. Pac Tel has purchased one wireless operator outright (Cross Country Wireless) and is in the process of purchasing two more.[49] When the acquisitions are completed, Pac Tel will have access to 9 million line-of-sight homes.[50]

Appendix B chronicles telephone company involvement in video programming. Some particularly noteworthy deals include AT&T's $137.5 million investment in DirecTV, the Bell Atlantic/Nynex $100 million investment in CAI Wireless Systems Inc. and Pacific Telesis' investments in three wireless carriers, valued at over $300 million. Each of these investments has an immediate and substantial impact on the cable industry.

---

45 Id.

46 Bill Husted, *BellSouth Makes $12 Million Bid for New Orleans Cable License*, ATLANTA CONSTITUTION, April 25, 1996.

47 Cervenka at 58.

48 Id.

49 Id.

50 Id.

Recent proposed mergers between regional telephone companies SBC Communications/Pacific Telesis and Bell Atlantic/NYNEX give the merged companies extraordinary market power and geographic reach. The SBC/Pacific Telesis merger results in a seven state, $20 billion monopoly. The Bell Atlantic/NYNEX merger creates a monopoly with $27.8 billion in annual revenues and covering 13 states and the District of Columbia.[51] The ultimate goal of these behemoth companies is to become consumers' and businesses' first choice for one-stop shopping for voice, video and data.

The market power, financial resources and consumer brand recognition possessed by local telephone companies -- particularly, but not exclusively, the RBOCs -- enables them to be formidable competitors to cable television companies. Moreover, the smaller independent and rural telephone companies have a significant advantage relative to the smaller cable companies against which they are most likely to compete. Telephone company investments in MMDS operations make the telephone companies' competitive impact on cable television companies immediate and substantial. Congress recognized the substantial impact telephone company investment in a cable competitor would have by enacting a new "effective competition" test, triggered by telephone company investment in an MVPD (other than DBS) competing with a local cable system.[52]

It is notable that while 6.4 million households now have access to competitive video services, the number of households which now have access to competitive telephone services is

---

[51] Kent Gibbons, *Bells Merge, Cable Shrugs*, MULTICHANNEL NEWS, April 29, 1996, at 1, 196 ("Gibbons").

[52] See Telecommunications Act of 1996, Section 301(b)(3)

practically zero. The evidence is indisputable that the Commission's policies to promote multichannel video competition have been successful and competition to cable is here and accelerating rapidly. If local telephone companies were to experience equivalent degrees of competition with equal rapidity, the pro-competitive policies of the Telecommunications Act will be looked upon as an equivalent success.

D. Broadcast Television Continues to be a Powerful Competitor

Despite some inroads made by cable program networks in households with cable television, broadcast television continues to dominate the nation's viewing patterns. Accordingly, broadcast television advertising continues to thrive, with 1996 revenues estimated at $29 billion.[53]

The 1996 Act loosened multiple ownership restrictions on broadcast television stations.[54] The 1996 Act relaxed the national audience reach limitation for a single owner of television stations to 35 percent. This will allow powerful group owners of television stations to accumulate many more stations and increase their share of the nation's television advertising revenue.

The 1996 Act also authorizes the Commission to issue spectrum licenses for advanced television services (ATV) and to adopt regulations that would permit broadcasters to use such additional spectrum for ancillary or supplementary services,[55] such as multiplexed or demographically targeted services. The Commission has recently issued a Notice of Proposed

---

[53] Veronis, Suhler and Associates Communications Industry Forecasts: Television Broadcasting, 1996.

[54] Telecommunications Act of 1996, Section 202(c)(1)

[55] Id. at Section 201, adding section 336(g)(1).

Rulemaking that would authorize the transmission of ancillary data services in this additional spectrum.[56]

II. HORIZONTAL INTEGRATION IN THE CABLE INDUSTRY HAS INCREASED SLIGHTLY, WHILE A DECLINE IN VERTICAL INTEGRATION IS IMMINENT

The cable industry has experienced a very slight increase in horizontal integration since the *1995 Competition Report*. As reported last year consolidation has occurred in response to technological change, regulation and competition. While vertical integration remains virtually unchanged from the *1995 Competition Report*, the impending sale of Viacom's cable systems will reduce vertical integration substantially.

A. Horizontal Integration

The Chief Justice and two other members of the Supreme Court have recently recognized that new market entrants have changed the competitive landscape for cable. As the Justices said, "[R]ecent developments -- which include the growth of satellite broadcast programming and the coming influx of video dialtone services -- suggest that local cable operators have little or no monopoly power and create no programming bottleneck problems...."[57] This assertion is borne out by the data discussed below on competitive market conditions and the information on market concentration which follows.

---

[56] *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, May 20 1996 *available in* 1996 FCC Lexis 2670 (FCC 96-207).

[57] Denver Area Ed. Tel. Consortium v. FCC, No. 95-124 (U.S. June 28, 1996) (Thomas, J. concurring and dissenting), at footnote 3

In the *1995 Competition Report,* the Commission concluded that the national cable television market was moderately concentrated. NCTA calculates the Hirfindahl-Hirschman index ("HHI") for the national cable market for 1996 at 915.76. (See Appendix C.) An index of below 1,000 is generally considered to represent an unconcentrated industry. The Tele-Communications, Inc. ("TCI") subscriber data reported by Paul Kagan Associates, Inc. includes customers served by TCI and its consolidated subsidiaries. This data does not reflect subscribers of cable companies in which TCI has an interest accounted for by the equity (TCI investment of 20 to 50 percent) or cost (TCI investment of less than 20 percent) methods. These companies include Lenfest, TKR Cable and InterMedia Partners. If all of TCI's interests are included, TCI would have 14,527,000 subscribers. This would equate to 22.88 percent of the market. The corresponding HHI would be 1,018.01, which would indicate the national cable market is just above the HHI "unconcentrated" level.

Under the present market structure, no cable company is close to reaching the 30 percent "horizontal ownership" limit in the Commission's rules Nonetheless, the industry has experienced some increased horizontal concentration over the past year. TCI, the largest cable company, has increased its share of subscribers from 19.50 to 20.43 percent.[58] Time Warner Cable has increased its share of subscribers from 14.51 percent to 18.51. The next largest cable company, Continental, serves 6.64 percent of subscribers.

---

[58] TCI has agreed to acquire Viacom Cable and TKR Cable. If these transactions are completed, TCI would have 14,841,000 subscribers. This would equate to 23.37 percent of the market, and the HHI would be 1,039.84. If TCI's interests in Lenfest and InterMedia Partners are included, TCI would have 16,068,500 subscribers, or 25.31 percent of the market, and the HHI would be 1,131.07. This would indicate that the national cable market is just above the HHI "unconcentrated" level and would represent only a slight increase compared to the index calculated as 1098 in the *1995 Competition Report.*

The cable industry has witnessed further consolidation in preparing to compete with telephone companies in the provision of voice, video and data services. Local telephone monopolies are beginning to compete head-to-head with cable companies in both wired and wireless systems. Regulation had made cable less attractive to investors, making it more difficult for all cable companies to raise capital needed for plant upgrade, rebuild and development for telecommunications competition. This has caused several medium- and smaller-sized companies to exit the business.

The consolidation occurring in the cable industry pales in comparison to that among the local telephone monopolies The proposed mergers between SBC Communications and Pacific Telesis and between Bell Atlantic and NYNEX give the resulting companies size and market power that dwarfs any concentration in the cable industry. Indeed, the 1995 revenues of the combined Bell Atlantic/NYNEX entity exceed the 1995 revenues from subscriber services of the entire cable industry.[59]

Also, the geographic clustering of cable systems brings about economies of scale that result in benefits to the customer such as more reliable engineering design, more efficient customer service, centralized data processing, regional programming and advertising and better employee training. As the Commission has recognized, regional clustering is also necessary if cable companies are to compete successfully with local exchange carriers to provide local

---

[59] See Gibbons supra, at 1 (reporting combined Bell Atlantic/NYNEX revenues of $27.8 billion) and Paul Kagan Associates, Cable TV Investor, May 21, 1996 at 6 (attached hereto as Table 4) (reporting 1995 Cable Industry Revenues as $25.3 million).

telephone service.[60] The Commission recognized in the *1995 Competition Report* that clustering could have procompetitive effects.[61]

This is the same conclusion that was reached by the Clinton Administration last year.[62] Larry Irving, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration (NTIA), told the Federal Trade Commission, in response to concerns that the FTC was considering adopting a policy against cable clustering, that "the Administration believes that such an action by the FTC would disserve consumers and hinder the growth of competition in the telecommunications marketplace." The letter cites "at least" two important benefits of clustering:

> First, owning systems in adjacent franchise areas can enable a cable firm to capture scale economies in the deployment of its distribution plant, thereby reducing the cost of providing cable service. As competition in the video marketplace continues to expand, a larger and larger proportion of those cost savings will be passed through to consumers in the form of lower rates. Second, cable companies are moving aggressively to enter the local telephone service market, and the Administration strongly supports such additional competition. Nevertheless, cable firms may not be able to offer local telephone services on a competitive basis unless, through clustering and other means, they can assemble service areas that approximate the areas served by the local telephone provider.

---

60 Cox Cable Communications Inc. and Times Mirror Company (Transfer of Control), Memorandum Opinion and Order, 10 FCC Rcd 1559, 1562 (1994)

61 1995 Competition Report at 2130.

62 Letter from Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Chairman Janet D. Steiger, Federal Trade Commission (January 12, 1995).