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In the Matter of)
Annual Assessment of the Status of) CS Docket No. 97-141
Competition in Markets for the)
Delivery of Video Programming)

NOTICE OF INQUIRY

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By the Commission:

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I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming.¹ This *Notice of Inquiry* ("Notice") is designed to assist us in gathering the information, data and public comment necessary to prepare the fourth annual report on competition in markets for the delivery of video programming ("1997 Competition Report"), which will update our assessment of the status of competition and will report on changes in the competitive environment since our *1996 Competition Report* was submitted to Congress.²

2. We recognize that much of the information we will need for the 1997 Competition Report can be obtained from publicly available sources. In addition, a considerable amount of relevant, and even necessary, information may be available in filings with the Commission in connection with a variety of ongoing proceedings. We are not asking parties to repeat here the substance of comments that have been filed in other proceedings. Nonetheless, while we intend to look to publicly available sources and filings in other proceedings as sources of information, commenters should feel free to comment or to provide information on any matter that they believe is relevant to the issues on which we will report. Commenters are invited to submit data, information, and analysis regarding the cable industry, existing and potential competitors to cable systems, and the prospects for increasing competition in markets for the delivery of video programming. Commenters are also invited to identify and comment on existing statutory provisions they perceive as restraining competition or inhibiting development of robust competition in markets for the delivery of video programming. In particular, we seek comment regarding our conclusions in the *1996 Competition Report*, current information and data regarding changes over the past year, and fact-based projections for the future development of competition

¹ Communications Act of 1934, as amended ("Communications Act") § 628(g), 47 U.S.C. § 548(g).

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, FCC 96-496 (Jan. 2, 1997) ("*1996 Competition Report*"), summarized at 62 Fed. Reg. 5627 (Feb. 16, 1997) (available at <http://www.fcc.gov>). Earlier reports in compliance with this statutory requirement were issued in 1994 and 1995. See *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, CS Docket No. 94-48, First Report, 9 FCC Rcd 7442 (1994) ("*1994 Competition Report*") and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 95-61, Second Annual Report, 11 FCC Rcd 2060 (1996) ("*1995 Competition Report*"). See also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 94-48, Notice of Inquiry, 9 FCC Rcd 2896 (1994); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 95-61, Notice of Inquiry, 10 FCC Rcd 7508 (1995); and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Notice of Inquiry, 11 FCC Rcd 7413 (1996).

in these markets. Commenters are also asked to provide any other information or analysis they deem relevant for this report.

3. In Section II of this *Notice* we solicit updated information on the cable industry and other competitors in markets for the delivery of video programming, technical advances that affect competition, and industry and market structure issues. As competition to cable's position as the primary distributor of multichannel video programming continues to expand, our ability to obtain timely and accurate data pertaining to all competing multichannel video programming distributors ("MVPDs") becomes increasingly important. Equally important is our ability to draw comparisons among MVPDs based on data and information derived from similar time periods. Thus, we strongly encourage all MVPDs to provide the data and information sought in this *Notice* and to submit data and information responsive to Section II that is current as of June 30, 1997.

4. Section III describes Commission actions taken to implement those portions of the Telecommunications Act of 1996 ("1996 Act")³ that were intended to remove barriers to competitive entry and to establish market conditions that promote competitive firm rivalry in video distribution markets. In this section, we request data and information on the effects of these provisions on existing and potential distributors of video programming. Finally, as provided in our *Video Accessibility Report*,⁴ we seek information in Section IV on methods and schedules for providing greater accessibility to video programs for persons with visual disabilities.

II. CHANGES IN MARKETS FOR THE DELIVERY OF VIDEO PROGRAMMING SINCE LAST YEAR'S REPORT

A. *Competitors in Markets For the Delivery of Video Programming*

5. Markets for the delivery of video programming are served by video distributors using both wired and wireless technologies. Among the MPVDs using predominantly wired distribution technologies are cable systems, private cable or satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). Among those relying predominantly on wireless distribution technologies are over-the-air broadcast television, multichannel multipoint distribution service ("MMDS"), instructional television fixed service ("ITFS"), local multipoint distribution service ("LMDS"), direct broadcast satellite ("DBS") service, and home satellite dish ("HSD") service. Other potential distribution mechanisms include interactive video and data services ("IVDS"), the Internet, and public utility companies.

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ See *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, MM Docket No. 95-176, Report, 11 FCC Rcd 19214 at 19271 ¶ 142 (1996) ("*Video Accessibility Report*").

6. As in previous reports, we seek factual information and statistical data about the status of video programming distributors using different technologies, and changes that have occurred in the past year.⁵ For each multichannel video programming distribution technology, we request the following information:⁶ (a) the numbers of homes passed (for wired technologies) or the numbers of homes capable of receiving service (for wireless technologies);⁷ (b) the numbers of subscribers and penetration rates;⁸ (c) channel capacities, the numbers and types of channels offered, and the numbers and types of services offered; and (d) industry revenues, in the aggregate and by sources (e.g., subscriber revenues, advertising revenues, programming revenues), expenditures, cash flows, and investments. In addition, we request information regarding: (a) industry transactions, including information on mergers, acquisitions, consolidations, swaps and trades, and cross-ownership; (b) other structural developments that affect distributors' delivery of video programming; (c) regulatory and judicial developments that affect use of different technologies; and (d) the effects of the 1996 Act and its implementation.

7. In addition, for certain video distribution technologies we seek additional information, including:

(a) In the *1996 Competition Report*, we noted that subscribership to existing DBS services increased substantially since the *1995 Competition Report*.⁹ We seek information about the further development of existing and planned DBS services, both full contiguous United States ("CONUS") and partial CONUS operations, and any changes in proposed prices, program offerings, and launch dates. In providing information regarding the numbers of subscribers and penetration levels of DBS and HSD providers, we request data on the geographic locations of DBS and HSD subscribers. We also seek data on the factors that may affect the extent of satellite service penetration, including relative technical quality of the service, exclusive programming services, access to network television broadcast signals, access to alternative multichannel video service providers, access to local broadcast signals, rates and customer service comparisons. To what extent are viewers switching from cable to satellite service and to what extent are satellite customers also simultaneously cable subscribers? To what extent are restrictions on the ability of satellite service providers to deliver broadcast signals to

⁵ See *Competition Reports, 1994-1996*, *supra* note 2.

⁶ We seek information both in the form of industry aggregate data and company specific data.

⁷ This includes the number of line-of-sight homes for distribution technologies that require line-of-sight for reception.

⁸ To the extent available, we also seek information on the numbers of subscribers to different levels of service (e.g., basic, cable programming service or "CPS," premium, pay-per-view, near video-on-demand, etc.).

⁹ *1996 Competition Report* at ¶ 38.

subscribers under the compulsory copyright licensing provisions of the Copyright Act influencing the ability of satellite providers to compete?

(b) The 1996 Act delineated four options for local exchange carriers ("LECs") provision of video services: OVS, common carriage, radio communications, and cable. We seek information on LEC entry into video distribution markets through each of these delivery options and the effect of such entry on competition. What changes, if any, have occurred since the *1996 Competition Report* with respect to LEC plans for video distribution? We also seek information regarding the extent to which unaffiliated video programming providers, such as SMATVs, are being carried on LEC common carriage platforms. For the carried providers, does this represent a change in business plans?

(c) In the *1996 Competition Report*, we noted that "overbuilds by non-LEC entities continue to be limited."¹⁰ We also reported on developments regarding franchised cable systems operated by LECs, both within their telephone services areas and outside those regions.¹¹ To update our information on the status of competition from overbuilds, we request data on the number and location of overbuilt markets, including maps and other information regarding the overlapping coverage areas of competing services. In addition, we request information regarding the manner in which overbuilders market their services and the effect of overbuild competition on cable rates, services and service quality.

(d) We seek information on the role of broadcast television in markets for the delivery of multichannel video programming. First, we seek comment on the extent to which distribution of local broadcast signals impacts competition in markets for the delivery of video programming. In particular, we seek information on technological, copyright, competitive and other issues associated with the distribution of local broadcast signals by video programming distributors not currently subject to broadcast television signal carriage requirements. Second, we solicit comment on the extent to which changes in ownership patterns in the television broadcast industry and in broadcast networking (United Paramount, WB, Home Shopping Network, and Paxson Communications Corporation) make broadcasting more or less competitive with cable television and other multichannel video service providers. Third, we seek information, particularly empirical evidence and economic studies, regarding the extent to which broadcast television competes as a distribution medium with MVPDs and with other entertainment and

¹⁰ *Id.* at ¶ 35.

¹¹ *Id.* at ¶¶ 73, 75.

information venues (such as radio or newspapers) for audiences and/or for advertising revenue.¹²

(e) We solicit information on video delivery competition for and within multiple dwelling units ("MDUs"). Is competition for or within MDUs more or less robust than competition for individual residential subscribers? What factors influence MDU competition? Are there factors unique to the MDU market that have policy consequences for the regulatory process? What are the public interest consequences of competition for exclusive access to MDUs versus competition within MDUs for subscribers?

(f) In the *1996 Competition Report*, we noted a decline in the market valuation of the stock of publicly-traded equity interests in each of the top five cable multiple system owners.¹³ We also observe that the stock market valuation of cable stocks continues to fluctuate.¹⁴ What, if anything, does this reflect regarding the state of competition in the MVPD market and the regulations applicable to these markets?

(g) We also note that cable rates have risen recently.¹⁵ Are such changes attributable to debt assumed for facilities upgrade purposes, increased programming costs, simple exercise of market power, Commission rules, other factors, or combinations of factors? Have the equipment aggregation rules had an

¹² In the 1994 and 1995 Competition Reports, we noted that broadcast television stations are a significant supplier of programming in the market for the delivery of video programming, but that broadcast stations as transmission medium do not have a significant constraining effect on the exercise of market power within markets for the delivery of video programming. *1994 Competition Report*, 9 FCC Rcd at 7492-95 ¶¶ 97-102; *1995 Competition Report*, 11 FCC Rcd at 2115 ¶ 115.

¹³ In the *1996 Competition Report*, we indicated that as of mid-November, 1996, the market valuation of publicly-traded equity interest in each of the top five cable multiple system owners was down 6 points from the Standard & Poor's Index of the 500 largest publicly-traded companies in the United States. *1996 Competition Report* at ¶ 26 n.52.

¹⁴ Geraldine Fabrikant, *Shareholders Pressure Cablevision*, New York Times, Mar. 10, 1997, at D11.

¹⁵ In the *1996 Competition Report*, we reported that between January and November of 1996, the cable services segment of the Bureau of Labor Statistics Consumer Price Index ("CPI"), a measure of price increases, had increased relative to the CPI for all goods and services. *1996 Competition Report* at ¶ 128. We note that, according to the CPI cable rates were flat in March 1997, marking the first such month for a considerable period. While all prices increased 0.1%, according to the CPI, cable showed no change. U.S. Bureau of Labor Statistics, Monthly Labor Review, April 1997. In addition, we note that, over the period of cable rate regulation from April 1993 to the end of 1996, the cable CPI increased by 8.4%, compared with the general CPI of 10.2%. See *Statistical Report on Average Rates for Basic Service, Cable Programming and Equipment*, MM Docket No. 92-266, Report on Cable Industry Prices, 12 FCC Rcd 3239 at 3245-46 (1997) ¶¶ 12-13. See also *Hearings of the Senate Commerce, Science and Transportation Committee on Cable Competition*, 105th Cong., 1st Sess. 1 (Apr. 10, 1997).

effect on rates? To what extent are cable operators implementing aggregated equipment rates and to what extent are they restructuring their programming packages and tiers of service as a result of actual or potential competition? We request information on the types of tier, equipment and rate restructuring that cable operators are undertaking and seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

B. Technological Issues

8. The *1996 Competition Report* described various technological advances that may affect industry structure and competition in markets for the delivery of video programming.¹⁶ For this year's report, we seek updated information on developments in the deployment, or planned deployment, of advanced technologies, such as digital compression, switched digital services and upgraded architectures. We seek data to update the information we presented about the different transmission facilities used for distribution of multichannel video programming, such as copper wire, coaxial cable, optical fiber, broadcast and other terrestrial radio frequency communications, terrestrial microwave, satellites, and use of the Internet, and how they affect, and are likely to affect, industry structure and competition for the provision of video services. We seek information concerning the hybridization of different transmission media. We also request information on system configurations and designs that may facilitate competition, such as the ability to distribute different types of signals and provide different types of services over the same transmission facility (e.g., digital, analog and telephone signals over a cable operator's facility). In addition, we seek information about developments in set-top boxes, including updates on interoperability, portability and market-driven standards. We also seek information on whether multichannel video distributors are leasing or selling reception equipment to subscribers, and the competitive impact, if any, of these alternatives in markets where direct competition among multichannel video programming distributors exists.

9. The use of digital forms of communication through various compression techniques allows for more efficient use of bandwidth by cable systems, satellite service providers, wireless cable systems, and broadcast stations. The communications involved are also more flexible in that different types of information -- audio, video, or data -- may be combined for distribution. We seek information on what types of services -- telephony, Internet access, paging, or audio -- are currently bundled or are planned to be bundled with video for distribution to subscribers, and the extent to which bundled services may affect the relative competitive posture of competing MVPDs. We also seek comment on potential problems and new issues relevant to multichannel video distribution competition in a digital environment.

¹⁶ *1996 Competition Report* at ¶¶ 170-84.

C. *Industry and Market Structure*

1. **Horizontal Concentration**

10. As in prior reports, we will provide updated information in the 1997 Competition Report on the structure and rivalry of markets for the delivery of video programming. In the *1996 Competition Report*, we refined our definition of the relevant market,¹⁷ posited alternative approaches to measuring concentration in the average local market,¹⁸ and identified product differentiation and entry conditions as factors affecting competition.¹⁹ We seek comment on the analysis of market structure conditions in the *1996 Competition Report*, and information and data necessary to apply the analysis in the 1997 Competition Report. In particular, we seek information on changes in the number and market share of all MVPDs, and the effects of MVPD horizontal concentration at the local, regional and national levels. In local markets where incumbent cable operators face competition from one or more other video programming distributors, we seek information on: (a) the identity of the competitors; (b) the distribution technology used by each competitor; (c) the date that each competitor entered the market; (d) the location of the market, including whether it is predominantly urban or rural; (e) an estimate of the subscribership and market share for the services of each competitor; (f) a description of the service offerings of each competitor; (g) differentiation strategies each competitor is pursuing; and (h) the prices charged for the service offerings.

11. In the *1996 Competition Report*, we noted that for purposes of examining national concentration in markets for the distribution of multichannel video programming, it is appropriate to consider of the presence of all MVPDs, not just cable systems. Consequently, we seek information and data regarding current national subscribership levels of all MVPDs. To the extent national concentration has increased or decreased for specific MVPDs, we seek comment on the reasons for such changes, including whether such changes are the result of merger and acquisition activity, marketing strategies, or other factors.

12. Mergers, acquisitions, consolidations and corporate restructuring are important causes of change in industry structure and in the intensity of market competition. As we have noted in prior reports, cable operators trade and swap systems to form regional clusters of service

¹⁷ *1996 Competition Report* at ¶¶ 115-18. We continued to use the 1992 Cable Act's definition of "multichannel video programming service" as the relevant product market. *Id.* at ¶ 116. We found the relevant geographic area for assessing MVPD competition was local, but rather than using the cable franchise as the relevant boundary, we concluded that "its extent can be defined by the overlap of the 'footprints' of the various service providers." *Id.* at ¶ 118.

¹⁸ We looked at concentration in local markets by analyzing national subscribership shares as a surrogate for local concentration, and alternatively, by analyzing the numbers of competitors in a market with comparable deployed capacity. *1996 Competition Report* at ¶¶ 119-22.

¹⁹ *Id.* at ¶¶ 123-28.

areas.²⁰ Broadcasters are consolidating station operations and ownership in record numbers.²¹ And, two Regional Bell Operating Company mergers have been announced.²² The Commission seeks information on such events, their effects on industry structure, and impact on markets for the delivery of video programming. In particular, we solicit maps that show the ownership patterns that have resulted from industry restructuring. We also request information on the effects of these changes on competition in markets for the delivery of video programming.

2. Vertical Integration

13. In the 1997 Competition Report, we will update information on existing and planned programming services, with particular focus on those programming services that are affiliated with video programming distributors. Thus, we seek information on programming services that are affiliated with cable operators, affiliated with other non-cable video programming distributors, and unaffiliated with any MVPD. In particular, we seek information on:

- (a) existing national and regional programming services, and the extent to which they are affiliated with cable operators or other MVPDs, including the percentage of ownership or amount and type of interest by each MVPD, the date such interest was acquired, and any changes since last year;
- (b) national and regional programming service launches and announced launches during the past year, and their MVPD affiliations;
- (c) the number of subscribers or nationwide share of subscribers for: (1) independent programming networks; (2) national cable programming networks distributed by cable systems; (3) national cable programming networks distributed by non-cable MVPDs; (4) national programming networks affiliated with non-cable MVPDs distributed by cable systems; and (5) national programming networks affiliated with non-cable MVPDs distributed by non-cable distribution systems;

²⁰ *Id.* at ¶ 137.

²¹ *See, e.g., Radio Rules Debated*, Television Digest, Feb. 17, 1997 (DOJ Acting Antitrust Chief Joel Klein states that more than 1000 radio stations have been involved in transactions in the year following passage of the 1996 Act).

²² *Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, FCC 97-28, Report No. LB-96-32, 1997 WL 49594, Jan. 31, 1997; Public Notice, *Bell Atlantic Corporation and NYNEX Corporation Seek FCC Consent for Proposed Transfer of Control, Pleading Cycle Established* (CCB Aug. 14, 1996); Public Notice, *Common Carrier Bureau Declares Bell Atlantic-NYNEX Transfer of Control Proceedings 'Restricted' for Ex Parte Purposes*, Tracking No. 96-0221, DA 96-1727 (CCB Oct. 18, 1996).

- (d) the number of subscribers or market share of subscribers for: (1) independent regional programming networks; (2) regional cable programming networks distributed by cable systems; (3) regional cable programming networks distributed by non-cable MVPDs; (4) regional programming networks affiliated with non-cable MVPDs distributed by cable systems; and (5) regional programming networks affiliated with non-cable MVPDs distributed by non-cable distribution systems;
- (e) the extent to which national and regional programming services have affiliations with actual or potential MVPD competitors;
- (f) audience ratings, prime time or all day-parts, of national and regional programming services;
- (g) whether a minimum level of subscribership is necessary to successfully launch new national and regional programming networks, whether there is a minimum subscribership level necessary for these networks to break even and survive, and whether these levels vary depending on whether the new programming network is vertically integrated with a MVPD. Have any national or regional programming networks been launched exclusively on non-cable distribution systems? Are there entry barriers that affect the launch of new programming networks?
- (h) the extent to which video programming distributors are acquiring proprietary rights, such as the purchase of sports teams, and the competitive strategy behind such acquisitions; and
- (i) changes in the relationships between program producers/providers and distributors, including whether producers/providers are paying for carriage on MVPDs instead of being paid license fees by MVPDs, and, if so, what services are involved. What are the implications of such arrangements for competition and the supply of programming?

14. As in prior reports, we also will update the effectiveness of our program access, program carriage, and channel occupancy rules.²³ In the *1996 Competition Report*, we noted that the program access rules, which are intended to ensure access by non-cable MVPDs to satellite delivered programming produced by companies affiliated with cable operators, have been credited as a necessary factor in the development of DBS and MMDS.²⁴ We also observed, however, a concern that the program access rules may be too narrowly focused to address some current

²³ *1996 Competition Report* at ¶¶ 149-66; *1995 Competition Report*, 11 FCC Rcd 2135-42 ¶¶ 157-72; *1994 Competition Report*, 9 FCC Rcd at 7520-22, 7528-36 ¶¶ 158-59, 173-98. The program access, carriage and channel occupancy rules govern relationships between cable operators and programming providers.

²⁴ *1996 Competition Report* at ¶ 150.

issues related to access to programming. In addition, we note that the 1996 Act expanded the program access rules to apply to OVS operators and common carriers in the same manner as they apply to cable operators.²⁵ Therefore, we seek information on the effectiveness of the program access rules during the past year, including the effect of expansion of these rules to OVS operators and common carriers, and on any remaining issues of concern to video programming providers or MVPDs. We request information that would help in assessing whether the program access rules should be expanded or contracted in their coverage. We seek comment on the extent to which there are programming distribution networks affiliated with non-cable MVPDs and whether such programming networks are available to competing MVPDs, including cable operators, on reasonable and nondiscriminatory terms.

15. We also seek comment on our leased access rules.²⁶ In particular, we seek comment on the impact of our recent revision of the formula for calculating the maximum reasonable rate for leased access²⁷ on the carriage of leased access programming and on competition in markets for the delivery of video programming. We specifically request data on the number of channels being used for leased access programming and the types of programming offered on such channels. We also seek information on the extent to which leased access channels are used on a part time, rather than full time, basis.

D. Effect of Competition in Local Markets

16. In the *1996 Competition Report*, we examined several case studies of local markets where cable operators faced actual competition from MVPD entrants,²⁸ and found that incumbent cable operators were generally responding to competitive entry in two ways: increasing their service offerings and lowering their prices.²⁹ We seek updated information on the effects of actual and potential competition in these local markets and in others where consumers have, or soon will have, a choice between MVPDs. In particular, we seek information on incumbent MVPDs responses to anticipated and actual entry by competing MVPDs. Do the competitive

²⁵ 47 C.F.R. §§ 76.1004, 76.1507.

²⁶ The leased access rules require cable operators to set aside channel capacity for commercial use of cable by unaffiliated programmers. 47 C.F.R. §§ 76.701, 76.970, 76.971, 76.975, 76.977. See also *Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation Leased Commercial Access*, MM Docket No. 92-266, Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 16933 (1996).

²⁷ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, CS Docket No. 96-60, Second Report and Order and Second Order on Reconsideration of the First Report and Order, FCC 97-27 (Feb. 4, 1997), summarized at 62 Fed. Reg. 11362 (Mar. 12, 1997). A petition for reconsideration is pending.

²⁸ *1996 Competition Report* at ¶¶ 201-33.

²⁹ *Id.* at ¶¶ 229-31.

responses focus on rates or on efforts to differentiate program service, technical performance or customer service? In addition, we request identification of particular strategic behavior and conduct by other MVPDs that affect competition in markets characterized by head-to-head competition between or among MVPDs.

17. We also noted in the *1996 Competition Report* that laws, regulations, and strategic behavior by incumbents can create impediments to entry and competition in markets for the delivery of video programming, and endeavored to briefly assess our efforts to reduce some of those impediments.³⁰ For example, we discussed our efforts regarding local restrictions on receiving equipment,³¹ inside wiring rules,³² and pole attachments.³³ We request information regarding other existing or potential regulatory impediments that may have the effect of deterring entry or preventing expansion of competitive opportunities in video program delivery markets.

18. In addition, we ask commenters to identify specific statutory provisions that are perceived as advancing or inhibiting competition or that have differential application and may distort competition among MVPDs, or that restrain competitive opportunities within markets for the delivery of multichannel video programming. Commenters are requested to provide specific examples of why or how such statutory provisions are not pro-competitive. We seek comment on such provisions regardless of whether they directly relate to the existing jurisdiction of the Commission if it is believed they effect competition in the MVPD market. Further, we ask commenters to identify specific Commission rules, policies or regulations that ought be reexamined in light of current competitive opportunities within multichannel video programming markets.

III. IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996

19. A number of the provisions of the 1996 Act were intended to encourage competition in markets for the delivery of video programming.³⁴ The *1996 Competition Report* described the Commission's actions through 1996 to implement the provisions of the 1996 Act that were expected to affect competition in markets for the delivery of video programming. In that report, we also discussed the initial effects of the revised regulatory policy on competition. In the *1997 Competition Report*, we would like to update our assessment of the effects of the various provisions of the 1996 Act on the status of competition. We seek comment on the impact of these various regulatory changes described below on competition.

³⁰ *Id.* at ¶¶ 185-200.

³¹ *Id.* at ¶ 186.

³² *Id.* at ¶¶ 189-91.

³³ *Id.* at ¶ 195.

³⁴ H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996).

20. There are ten specific changes from the 1996 Act relating to competition in video markets on which comment would be useful:

OVS. Section 653 of the Communications Act³⁵ provides a new means of entering video programming market under the "open video system" ("OVS") rules. The new "OVS" framework permits telephone companies and other providers of multichannel video programming to offer their own programming directly to subscribers provided they simultaneously offer to provide transmission services to unaffiliated programming providers. The Commission has promulgated rules pursuant to this new statutory provision³⁶ that are intended to facilitate both facilities based market entry and programming competition. The Commission has approved nine applications for certification of proposed OVS operations. Of these applications, one was made by a LEC and eight by others. We seek information on the plans of LECs and others with respect to the provision of video programming using the OVS rules.

Preemption of restrictions on over-the-air reception devices. Section 207 of the 1996 Act directed the Commission to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services."³⁷ This provision is intended to ensure that consumers have access to a broad range of video programming services and to foster competition among different types of video programming services. In response to this provision, the Commission promulgated rules that preempt government and nongovernment restrictions on the installation of receiving equipment.³⁸ What effect has the implementation of this provision had on competition in the markets for delivery of video programming?

³⁵ Section 651(a)(3)-(4), 47 U.S.C. § 571(a)(3)-(4).

³⁶ *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14639 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, CS Docket No. 96-46, Second Report and Order, 11 FCC Rcd 4652, (1996); *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, CS Docket No. 96-46, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, Second Order on Reconsideration, FCC 97-129, 1997 WL 180209 (Apr. 15, 1997); *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, CS Docket No. 96-46, Fourth Report and Order, FCC 97-130 (Apr. 15, 1997), summarized at 62 Fed. Reg. 26235 (May 13, 1997).

³⁷ 1996 Act, sec. 207.

³⁸ See *Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Notice of Proposed Rulemaking, 11 FCC Rcd 15097 (1996). Petitions for reconsideration are pending. See also *Report and Order and Further Notice of Proposed Rulemaking on Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 5809 (1996).

Change in cable television definition. Section 602(7) of the Communications Act was amended by the 1996 Act to narrow the definition of a cable system to exempt facilities that serve buildings under different ownership, control, or management, provided that the facilities do not use public rights-of-way.³⁹ Thus, it provided that a SMATV operator can expand service to MDUs with different owners without obtaining a cable franchise, provided that the operator does not use a public right-of-way. We request comment on the effect of this revised definition on competition. Specifically, we seek information about any actual or planned entry or expansion by SMATV operators that was stimulated by this new provision in the law.

New "effective competition" definition. Section 623 of the Communications Act was amended by 1996 Act to broaden the definition of effective competition so that the cable service rates of an incumbent cable operator are deregulated when a LEC or its affiliate (or any MVPD using the facilities of such carrier or its affiliate) offers comparable video programming in the local franchise area by any means other than direct to home satellite ("DTH") services.⁴⁰ We request comment on the effect of this change on competition and data on the rates charged for cable service in areas where LEC effective competition exists.

Changes in rate regulation provisions. A number of provisions of the 1996 Act directly affect the cable industry and the regulation of its rates. Section 301(c) of the 1996 Act contains immediately effective deregulatory provisions for small cable system operators, defined as cable operators in franchise areas where they serve 50,000 or fewer subscribers.⁴¹ Section 301(b) of the 1996 Act contains deregulatory provisions for large cable system operators that take effect within three years of enactment of the 1996 Act.⁴² We request comment on the effect of these provisions on competition and on the rates charged for cable service compared to those charged by competing MVPDs.

Rate competition in multiple dwelling units. Section 623(d) of the Communications Act contains provisions that generally require cable operators to charge uniform rates in the geographic areas they serve. This provision was amended in the 1996 Act so that it is

³⁹ 1996 Act, sec. 301(a)(2) (codified as Communications Act § 602(7), 47 U.S.C. § 22(7)). The redefinition effectively eliminated the commonly owned building requirement for a SMATV system serving multiple buildings. This redefinition was recommended in the *1994 Competition Report*, 9 FCC Rcd at 7558 ¶ 252.

⁴⁰ 1996 Act, sec. 301(b)(3). See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket 96-85, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937 (1996).

⁴¹ 1996 Act, sec. 301(c). This deregulation is limited to the cable programming service ("CPS") tier unless the operator had only a single tier as of December 31, 1994, in which case all tiers are deregulated.

⁴² 1996 Act, sec. 301(b) (codified as Communications Act § 623(m), 47 U.S.C. § 543(m)).

inapplicable to non-predatory bulk discounts to MDUs.⁴³ We seek comment on the development in competition in MDUs and on the consequences of this change. How are these developments affecting competition?

Competition in MVPD "navigation" equipment markets. Section 629 of the Communications Act was added in the 1996 Act and contains provisions to encourage competition in MVPD equipment markets. This section requires the Commission to adopt regulations to assure the commercial availability of navigation equipment, such as converter boxes, interactive communications equipment and other equipment used by consumers to access multichannel video programming services.⁴⁴ However, the Commission must not jeopardize security of video programming services or impede the prevention of theft of service. To fulfill this statutory requirement, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on technical and economic issues related to the commercial availability of equipment.⁴⁵ We seek comment on developments in the equipment markets involved as they relate to this statutory provision.

Public utility company market entrants. Pursuant to Section 103 of the 1996 Act, the Commission established rules that enable public utility holding companies to enter into telecommunications, information services and video markets and has approved exempt telecommunications company status for 24 companies.⁴⁶ We seek information on the existing or potential entry of public utility holding companies into the video marketplace and their effect on competition.

Pole Attachment Regulation. Section 703 of the 1996 Act expands the application of the pole attachment rate formula to include telecommunications carriers in addition to cable systems.⁴⁷ Section 224(a)(4) of the Communications Act now defines "pole attachment" as "any attachment by a cable system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."⁴⁸ However, poles, ducts, conduits, or rights-of-

⁴³ 1996 Act, sec. 301 (codified as Communications Act § 623(d), 47 U.S.C. § 543(d). *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket 96-85, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937 (1996).

⁴⁴ 1996 Act, sec. 304 (codified as Communications Act § 629, 47 U.S.C. § 549).

⁴⁵ *Implementation of Section 304 of the Telecommunications Act of 1996 -- Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Notice of Proposed Rulemaking, FCC 97-53 (Feb. 20, 1997), summarized at 62 Fed. Reg. 10011 (Mar. 5, 1997).

⁴⁶ 1996 Act, sec. 103 (codified as Public Utility Holding Company Act of 1935 § 34, 15 U.S.C. § 79z-5c); *Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by Section 103 of the Telecommunications Act of 1996*, GC Docket No. 96-101, Report and Order, 11 FCC Rcd 11377 (1996).

⁴⁷ 1996 Act, sec. 703 (codified as Communications Act § 224, 47 U.S.C. § 224).

⁴⁸ 47 U.S.C. § 224(a)(4).

way owned or controlled by any railroad, cooperative, or any federal or any state entity are not considered utilities for this purpose and are exempt from this regulation.⁴⁹ We seek comment on the effect on competition that this exemption has on entities offering telecommunications services, including video services. In particular, we seek information to demonstrate whether the rates charged for pole attachments by cooperatives and municipalities, especially in rural areas, impede or promote competition.⁵⁰

Elimination of entrance barriers for entrepreneurs and small businesses. Finally, pursuant to Section 101 of the 1996 Act,⁵¹ the Commission has instituted a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services.⁵² We seek comment on this provision in the context of general competitive developments in the markets for the delivery of video programming.

IV. VIDEO DESCRIPTION

21. In our *Video Accessibility Report* to Congress required by Section 713(f) of the Communications Act, we concluded that the record before us was insufficient to assess the appropriate methods and schedules for phasing video description into the marketplace.⁵³ Video description is an aural description of a program's key visual elements that are inserted during the natural pauses in the program's dialogue. It generally describes an action that is otherwise not reflected in the dialogue such as the movement of a person in a scene.⁵⁴ We decided in our *Report* that the best course was to continue to monitor the deployment of video description and the development of standards for new video technologies that will afford greater accessibility of video description. We further stated that in the context of the 1997 Competition Report we would gather and evaluate information regarding the deployment of secondary audio

⁴⁹ 47 U.S.C. § 224(a)(1).

⁵⁰ *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, Report, FCC 97-164 ¶ 175 (May 8, 1997).

⁵¹ 1996 Act, sec. 101 (codified as Communications Act § 257, 47 U.S.C. § 257).

⁵² *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, Report, FCC 97-164, (May 8, 1997).

⁵³ Congress directed the Commission to commence an inquiry within six months of the enactment of the 1996 Act and to report to Congress on its findings, including an assessment of the appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. 47 U.S.C. § 613(f).

⁵⁴ See *Video Accessibility Report*, 11 FCC Rcd at 19253-54 ¶¶ 94-95.

programming ("SAP") channels⁵⁵ and digital technology that will enable video providers and programmers to include video description.

22. In the *Video Accessibility Report*, the Commission found that any schedule for expanding the use of video description depends, in part, on implementation of advanced digital television which can make the distribution of additional audio channels feasible and facilitate the implementation of video description.⁵⁶ We concluded that funding also will effect any schedule for the widespread use of video description since it appears that advertising support alone is unlikely to be sufficient to fund this service, given the costs involved.⁵⁷ Furthermore, we stated that there are certain legal issues, such as copyright matters, that remain unresolved and are likely to require a Federal reassessment of the applicability of existing laws.⁵⁸

23. Accordingly, we seek data and information here regarding video description that will permit us to provide Congress with additional findings on methods and schedules for providing greater accessibility to persons with visual disabilities. We request information and comment on developments regarding the implementation of video description of video programming since the *Video Accessibility Report* was submitted to Congress. We specifically solicit data on the number of broadcast television stations and MVPDs currently capable of transmitting and decoding a SAP signal and data on the costs of adding this capability. We request information regarding the cost of providing video description for video programming and possible funding mechanisms. We also seek information on whether the implementation of digital technologies will provide additional audio channels that would increase the feasibility of video description. We further ask commenters to focus on the specific methods and schedules for ensuring that video programming includes descriptions, technical and quality standards and other relevant legal and policy issues. Moreover, we request comment on any efforts by persons with disabilities and the video programming industries regarding coordination in new technology standard setting and funding mechanisms. We will use this additional record to better assess those issues that were not fully addressed in the *Video Accessibility Report*.

⁵⁵ Video description requires the development of a second script and is transmitted using the SAP channel. The SAP channel allows for the delivery of a third audio track for a program in addition to the monaural and stereophonic audio tracks. In order for a viewer to access the SAP channel, he or she must have a television or VCR equipped to receive this channel. A consumer who has a television or VCR with SAP capability can activate this feature to receive the video description or other audio, if available, in lieu of the primary soundtrack. At this time, however, not all broadcast television stations or other video distributors are able to transmit the SAP channel and only about half of the nation's homes have televisions or VCRs with the capability to receive the SAP channel. See *Video Accessibility Report*, 11 FCC Rcd at 19256-57 ¶¶ 100-05.

⁵⁶ *Id.* at 19270 ¶ 139.

⁵⁷ *Id.* ¶ 140.

⁵⁸ *Id.* at 19270-71 ¶ 141.

V. PROCEDURAL MATTERS

24. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, 613 and 628(g) of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before July 23, 1997, and reply comments on or before August 20, 1997. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. We also encourage commenters to include a computer disk copy of their comments with their official filings whenever possible, as this will allow the comments to be easily transferred to the Commission's Internet site. Submissions on disk should be on 3.5 inch diskettes, formatted for Windows 3.1. These filings should be in WordPerfect 5.1 for Windows format with the whole submission contained in one file. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

25. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(a)(4).

26. Further information on this proceeding may be obtained by contacting Marcia Glauberman in the Cable Services Bureau at (202) 418-7200 or Rebecca Dorch in the Office of General Counsel at (202) 418-1880.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary