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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
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Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming	)))	CS Docket No. 98-102

NOTICE OF INQUIRY

Adopted: June 23, 1998 **Released: June 26, 1998**

Comment Date: **July 31, 1998**
Reply Comment Date: **August 31, 1998**

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 markets 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 fifth annual report on competition in markets for the delivery of video programming ("1998 Competition Report"), which will update our assessment of the status of competition and will report on changes in the competitive environment since our *1997 Competition Report* was submitted to Congress.[2] We also note that, pursuant to Section 623(c)(4) of the Communications Act, the Commission's authority under Section 623(c)(3) to review complaints submitted by local franchising authorities concerning increases in rates for cable programming service ("CPS") tiers sunsets on March 31, 1999.[3] The information gathered in this report will present the last comprehensive picture of the state of cable competition prior to the sunset date.

2. Through this *Notice*, commenters are invited to submit information and analysis regarding competition in markets for the delivery of video programming. We will use comments submitted in this proceeding in conjunction with information from publicly available sources and filings in other Commission proceedings for the 1998 Competition Report. We seek data, information and comment on the cable industry, existing and potential competitors in markets for the delivery of video programming, and the prospects for increasing competition in these markets. We are interested in analyzing competition in markets for delivery of video programming. We request comment regarding changes in these markets over the past year and fact-based projections for the future development of competition in these markets. Commenters also are invited to identify and comment on existing statutory provisions and Commission regulations they perceive as restraining competition or inhibiting development of robust competition in markets for the delivery of video programming. Commenters also may provide any other information or analysis they deem relevant for this report. For this year's report, and to compare information with that provided in last year's report, we would like to present data as of June 30, 1998, and ask parties, to the extent feasible, to submit data and information that are current as of that date.

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[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. 97-141, Fourth Annual Report, 13 FCC Rcd 1034 (1998) (*"1997 Competition Report"*). Earlier reports in compliance with this statutory requirement were issued in 1994, 1995 and 1996. *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"*); *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"*) and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, 12 FCC Rcd 4358 (1997) (*"1996 Competition Report"*).

[3]47 U.S.C. § 543(c)(3), (c)(4).

II. MATTERS ON WHICH COMMENT IS REQUESTED

3. The Telecommunications Act of 1996 ("1996 Act") was intended to extend the pro-competitive provisions of the 1992 Cable Act and to establish a "pro-competitive de-regulatory national policy framework" for the telecommunications industry.[4] Congress intended to eliminate barriers to competitive entry and to establish market conditions that promote competition. The Commission continues to pursue the goal of the 1996 Act to foster competition in markets for the delivery of video programming. In the 1998 Competition Report, we plan to provide information about, and report on the status of, competitors in these markets and analyze the effect that implementation of the provisions of the 1996 Act has had on competition among providers of video programming.[5] In this year's report, we expect to assess the competitive alternatives available to consumers and to evaluate the factors that affect the degree to which competition has come about as a result of the existing regulatory framework and industry conditions. We intend to compare video and other services (e.g., telephony, data) offered through the various distribution technologies used to provide multichannel video programming. We also want to examine interservice competition, including the extent to which cable operators are providing telephone service and telephone companies are providing video services. We plan to compare the prices of the individual and combined services offered to consumers through various distribution technologies and by various service providers. Further, we would like to understand what factors affect the rates charged consumers for video programming and other services (including associated equipment) and changes in those rates over time (e.g., technical upgrades for enhanced services, programming rights fees).

A. Competitors in Markets For the Delivery of Video Programming

4. Markets for the delivery of video programming are served by video distributors using both wired and wireless technologies. Among the multichannel video programming distributors ("MVPDs") 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.

5. 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.[6] For each video programming distribution technology, we seek information by company, by geographic market served and on an aggregate industry basis. In particular, we request data on the following: (a) the number of homes passed (for wired technologies) and the number of homes capable

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[4]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See also* H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996).

[5]*See 1997 Competition Report*, 13 FCC Rcd at 1140-1163 ¶¶ 211-257; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 97-141, Notice of Inquiry, 12 FCC Rcd 7829, 7841-44 ¶ 20 (1997).

[6]*See Competition Reports*, 1994-1997, *supra* note 2.

of receiving service (for wireless technologies);[7] (b) the number of operators; (c) the identities of the ten largest operators (national market only); (d) the number of subscribers and penetration rates;[8] (e) channel capacities and the number and types of channels offered; and (f) the number and types of services offered. In addition, we request financial information for each technology, including firm and industry revenues, in the aggregate and by sources (e.g., subscriber revenues, advertising revenues, programming revenues); cash flow; changes in stock prices; investments; capital acquisition; and capital expenditures.

6. For each video programming distribution technology, we also request information describing: (a) technological advances (e.g., deployment of digital services) that make or may make the technology competitive; (b) the effort (including steps, costs and time) needed to increase the number of homes passed or capable of receiving service; (c) the effort (including steps, costs and time) needed to increase the number of channels and types of services offered; and (d) regulatory and judicial developments that affect the use of different technologies. In addition, in evaluating the extent of competition among various MVPDs' services or technologies, we seek information and analysis on the degree to which viewers or consumers consider the different types of MVPDs to be substitutes. In particular, we request any information available on the extent to which customers have switched from one provider or technology to another one, and information concerning what factors were responsible for the switching, such as relative prices, service offerings, availability or lack of "favorite" programming, technical problems, ease of use or special features available with a specific technology.

7. We also request the following additional information for specific types of video distributors or distribution technologies:

(a) Cable television. In our *1997 Price Survey*, we found that cable rates were rising faster than the national inflation rate and that cable systems not subject to competition are generally charging higher rates for their services.[9] What factors are causing changes in cable rate levels? Are such changes attributable to investments made for facilities upgrades that provide increased channel capacity, permit the development of digital service tiers or allow cable operators to offer non-video services (e.g., telephony, data)? To what extent are the changes in rates attributable to increases in programming costs? Are these increases due to a rise in licensing fees, an increase in the number of programming services offered or a combination of both? Do regulations or laws have an impact on increased rates? Are increased rates the result of an absence of rate constraining pressures from competitive alternatives, other factors, or a combination of factors?

[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]*See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 (Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment)*, MM Docket No. 92-266, Report on Cable Industry Prices, 12 FCC Rcd 22756, 22763 ¶ 27 (1997) (*"1997 Price Survey"*); *1997 Competition Report*, 13 FCC Rcd at 1060-61 ¶ 38. We note that the Commission will be collecting information for preparation of the 1998 Price Survey during the pendency of this proceeding.

To fully understand the state of competition in the MVPD market, we seek comment on how these programming services are being packaged for consumers. We understand that some cable operators and other MVPDs offer their programming in "mini-tiers", on an a la carte basis, in digital tiers, or as a "lifeline" basic tier. Specifically, we seek comment on the economic, competitive, legal and technical considerations that go into creating such tiers of programming services. We also are interested in information on the extent cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition? What types of tier, equipment and rate restructuring are cable operators undertaking? We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

Most of the readily available information regarding new cable service offerings and deployment of new technologies is limited to the activities of major multiple system operators ("MSOs"). Yet, we understand that other MSOs also are upgrading their cable systems. We, therefore, seek information on the service and technology deployment activities of medium size and smaller cable firms. To what extent do medium and small MSOs offer services in addition to video programming to their subscribers? What factors influence the ability of smaller firms to upgrade technologically? Are smaller firms implementing digital technologies or are they planning to deploy digital technologies in the foreseeable future?

(b) Direct-to-Home Satellite Services. We seek updated information about the further development of existing direct-to-home ("DTH") satellite services (e.g., DBS, HSD). In both the *1996* and *1997 Competition Reports*, we noted that DBS subscribership had increased substantially over the previous year, while the number of HSD subscribers has been declining.[10] Are these trends continuing? With respect to the number of DBS and HSD subscribers and penetration levels, we request data on the geographic locations of DBS and HSD subscribers. We also solicit information regarding competition between cable and DBS for subscribers. Are there identifiable differences between consumers who choose to subscribe to DBS rather than subscribe to cable? For example, is DBS more likely to attract "high end" subscribers (i.e., those subscribers who purchase the most video programming)? We seek information regarding programming packages offered to DTH subscribers, the pricing of such programming, and any changes since our last report. To the extent that changes have occurred in DTH services (i.e., programming or prices), are there identifiable factors causing these changes? Commenters also are asked to discuss the status of proposed DTH services, including planned pricing, programming, and launch dates, as well as whether customers will lease or purchase their receiving equipment. We request information on any new planned DTH service providers, regardless of which satellite band they may choose to use. We also request information on any foreign licensed DBS systems that, pursuant to agreements between their countries and the United States, may plan to provide DBS service to the U.S. We note that the ability of DTH services to provide broadcast television programming is limited under the Copyright Act.[11] In the *1997 Competition Report*, we observed

[10] *1996 Competition Report*, 12 FCC Rcd at 4376, 4385 and 4489-90 ¶¶ 38, 50 and Appendix C; *1997 Competition Report*, 13 FCC Rcd at 1070-71, 1078, and 1194-97 ¶¶ 55, 69 and Tables C-3 through C-5.

[11] 17 U.S.C. § 119. *See* H.R. 3210 and S. 1720. These pending bills propose to: (1) give satellite providers a permanent compulsory copyright license; (2) eliminate the 90-day waiting period for new satellite subscribers who (continued...)

that the DBS industry is developing antennas to facilitate the reception of over-the-air broadcast transmissions by their subscribers.[12] We seek information on any recent developments in this area. We also request comment on the effect that the provision of local broadcast signals into local television markets has on the ability of DBS operators to compete with incumbent cable operators. We further request information on whether consumers continue to subscribe to cable service along with DTH satellite services, especially DBS.

(c) Local Exchange Carriers. The 1996 Act delineated four options for local exchange carriers ("LECs") provision of video services: open video systems ("OVS"), common carriage, radio communications, and cable.[13] 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 *1997 Competition Report* with respect to LEC plans for video distribution? In the *1997 Competition Report*, we reported on developments regarding franchised cable systems operated by LECs, both within their telephone services areas and outside those regions. To update our information on the status of competition from overbuilds, from both LEC and non-LEC operators, 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. We note that several LECs, such as Bell Atlantic and SBC, have recently announced marketing and distribution agreements with DirecTV. We request information regarding these agreements and other similar arrangements between LECs and other video distributors, including the services offered and costs. Are video programming services being bundled with telephone and other services?

(d) Broadcast Television. We seek information on the role of broadcast television in markets for the delivery of multichannel video programming. We request 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 information venues (such as radio or newspapers) for audiences or for advertising revenue. We also seek information on technological, copyright, competitive and other issues associated with the distribution of local broadcast signals by video programming distributors, including those not currently subject to broadcast television signal carriage requirements. While we recognize that broadcast television stations are still planning for the conversion to digital television ("DTV"), we ask commenters to provide any available information on the current status of high definition television ("HDTV") experimental operations, the construction of digital television transmission facilities and other

[11](...continued)
had been cable subscribers; (3) allow satellite carriers to retransmit local signals to households within a station's local market; and (4) establish a new Copyright Royalty Adjudication Board to determine royalty fees for satellite carriers.

[12]*1997 Competition Report*, 13 FCC Rcd at 1072-73 ¶ 58.

[13]*See* Communications Act § 651(a), 47 U.S.C. § 571(a).

aspects of the implementation of digital television service that may be useful for preparation of the 1998 Competition Report.[14]

(e) LMDS. As noted in the *1997 Competition Report*, local multipoint distribution service ("LMDS") technology is currently in very limited use for video service.[15] The Commission recently auctioned additional LMDS licenses that would permit operators to offer video programming and numerous other services including high-speed data access, two-way interactive video and teleconferencing.[16] To what extent could LMDS provide video programming service in competition with other MVPDs? We ask commenters to provide data on planned deployment and expected launch dates for LMDS technology.

(f) Interservice Competition. The 1996 Act repealed the statutory prohibition against an entity holding attributable interests in a cable system and a LEC with overlapping service areas.[17] This change was expected to lead to a technological convergence that would permit the use of the same facilities for the provision of telephone and cable service. In the *1997 Competition Report*, we noted that the one area where cable operators and telephone companies have started to compete is in the provision of Internet access.[18] Other video programming distributors, such as wireless cable and private cable operators using MMDS and SMATV technologies, also are providing access to the Internet.[19] We seek information, by distribution technology and firm, concerning the provision of multiple services in local, regional and national geographic markets. For each entity providing services in addition to video services, we seek the following information:

a. A description of the video and non-video services it provides, and the equipment and facilities it uses to provide each service;

b. Whether multiple services are provided using, in whole or in part, the same equipment or facilities, and, if so, a full description of the equipment or facilities used to provide multiple services, the costs, advantages and disadvantages involved in doing so, and the types of customers to which each service economically can be provided;

c. The actual and projected number of subscribers to, and homes passed by, each service as of the end of June 1998, December 1998, and June 1999; and

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[14]To the extent this information is already on file with the Commission, commenters should cross-reference other submissions.

[15]*1997 Competition Report*, 13 FCC Rcd at 1084 ¶ 79.

[16]*1997 Competition Report*, 13 FCC Rcd at 1084 ¶ 79. *See also Winning Bidders in the Auction of 986 Local Multipoint Distribution Service (LMDS) Licenses*, Report No. AUC-17-I (Auction No. 17), DA 98-572, 1998 WL 136069 (released March 26, 1998).

[17]*See* Communications Act § 652(d), 47 U.S.C. § 572(d).

[18]*1997 Competition Report*, 13 FCC Rcd at 1043, 1064-1067 ¶¶ 11, 47-49.

[19]*1997 Competition Report*, 13 FCC Rcd at 1083-84, 1088 ¶¶ 78, 86.

d. The comparative total and per-subscriber physical plant, operating and programming costs of providing (i) multichannel video programming, and (ii) combined video and non-video services.

(g) Service to MDUs. The *1997 Competition Report* identified services to multiple dwelling unit ("MDU") buildings as a market warranting separate consideration.[20] We solicit updated information on video delivery competition for and within MDUs. In 1997, the Commission established procedures for the orderly disposition of MDU wiring in the event the MDU owner wants to switch the entire building to an alternative provider or wants to permit an alternative provider onto the premises to compete for the right to use inside wiring on a unit by unit basis.[21] The Commission also provided that individual subscribers may install their own home wiring or add to their service provider's home wiring. We seek information and comment on whether and how these new rules have affected competition among MVPDs for subscribers within 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?

8. In the 1998 Competition Report, we plan to assess the extent to which the various video distribution technologies provide competitive alternatives for consumers. We seek this information to allow us to compare the cost to consumers of subscriptions to alternative MVPD services (cable, DBS, MMDS, SMATV, or OVS) and to better understand the factors considered by consumers when choosing among alternative MVPDs.[22] For each type of MVPD, we ask commenters to describe the service provided (e.g., 50 channels of video programming, Internet access) and the average monthly cost to the customer of each service (e.g., video, data) provided by the MVPD. We ask commenters to provide separate cost figures for each type of service offered by the MVPD. The information submitted should reflect: (a) the up-front costs for equipment and installation for each service; (b) the costs of adding each service to more than one television set; (c) prices for the various program options and packages offered by each service; (d) the costs of receiving local broadcast stations along with each service; and (e) any other information relevant to consumer considerations when selecting among services. Further, we seek comment on the appropriate method for comparing the services and costs of different MVPDs. For example, for services that require the purchase, rather than the rental, of equipment, should the costs of equipment be amortized over a period of time? What is the appropriate time period? Are there other factors that we should consider in making such comparisons?

B. Market Structure and Conditions Affecting Competition

1. Industry and Market Structure

9. As in prior reports, we will provide updated information in the 1998 Competition Report on the structure of, and rivalry in, markets for the delivery of video programming. We intend to evaluate

[20] *1997 Competition Report*, 13 FCC Rcd at 1109-10 ¶¶ 129-130.

[21] *Cable Home Wiring*, CS Docket No. 95-184 and MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1998).

[22] *1997 Competition Report*, 13 FCC Rcd at 1061-62 ¶ 39-42.

market concentration at the local, regional and national levels as we have done previously. We ask commenters to provide updated information on industry transactions, including information on mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments that affect distributors' delivery of video programming. 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.

10. With respect to regional concentration (i.e., "clustering"), for cable and other MVPDs, we seek information on the geographic areas served by particular companies. What effects have industry consolidation and clustering had on competition? We seek specific, detailed information on transactions involving system acquisitions and trades for each video distribution technology and the "geography" of the major companies in each technology.

11. We also seek data regarding current national subscribership levels of all MVPDs, whether these levels have changed since the *1997 Competition Report*, and, if so, how significantly.[23] To the extent national concentration has increased or decreased for specific MVPDs, we ask commenters to discuss the reasons for such changes, including whether such changes are the result of merger and acquisition activity, marketing strategies, or other factors. We also seek updates on the status of the mergers and transactions that were described in the *1997 Competition Report* as pending or proposed but not consummated. In addition to comparing MVPDs as we have done in the past, we would like to evaluate MVPD service providers in the economic context of the larger communications marketplace. In this regard, we solicit data and information that will show how broadcast television, cable television, telephone, satellite, equipment suppliers and other participants compare in terms of relative size and resources (e.g., revenues) and indicate the extent to which participants have the ability to enter each others' market.

2. Programming Issues

12. In the 1998 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. As in previous reports, we will assess the extent to which video programming services are affiliated with cable multiple system operators ("MSOs") and continue to examine trends in the ownership of programming services. We seek information detailing each MSO's ownership interests in video programming services, including the amount and type of interest held by each MSO, the date such interest was acquired, and any changes since last year.

13. We also ask commenters to provide updated figures for the number of subscribers or nationwide share of subscribers for: (a) independent programming networks; (b) national programming

[23]The Commission also seeks information regarding national ownership levels in *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, MM Docket No. 92-264, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 98-138 (adopted June 23, 1998).

networks distributed by cable systems; (c) national programming networks distributed by non-cable MVPDs; (d) national programming networks affiliated with non-cable MVPDs distributed by cable systems; and (e) national programming networks affiliated with non-cable MVPDs distributed by non-cable distribution systems. In addition, commenters are asked to provide current figures for the number of subscribers or market share of subscribers for: (a) independent regional programming networks; (b) regional programming networks distributed by cable systems; (c) regional cable programming networks distributed by non-cable MVPDs; (d) regional programming networks affiliated with non-cable MVPDs distributed by cable systems; and (e) regional programming networks affiliated with non-cable MVPDs distributed by non-cable distribution systems.

14. We seek information on the various program options offered by each MVPD technology, including exclusive program offerings, the number of channels available, and the comparability of the program options and packages available with each technology. Are there certain programming services (i.e., "marquee" program services) or specific classes of service (e.g., movie, sports or news channels) that an MVPD needs to provide to subscribers in order to be successful? If so, which services or classes of services? Are there services that have substitutes and that are not critical to the competitive viability of MVPDs?

15. We request data on the extent to which there are programming networks affiliated with non-cable MVPDs and whether such programming networks are available to competing MVPDs, including cable operators, on reasonable and nondiscriminatory terms. What is the current status of non-cable MVPDs' efforts to produce their own programming? Commenters are asked to describe the costs of, and any difficulties they have encountered in, producing or securing their own programming, either individually or jointly.

16. We also request updated information on recent and planned programming launches. How many new programming services are in development, and when are they currently scheduled to launch? What types of programming will they offer? To what extent does the success of a new service depend on the tier or package of service on which it is placed by MVPDs? To what extent are local cable operators or broadcasters involved in providing local or regional news or sports channels?

17. In addition, we request information on electronic programming guides offered by cable operators and other MVPDs. To what extent do MVPDs offer or plan to offer programming guides to their subscribers? Electronic programming guides can be produced by individual MVPDs or can be distributed by national services and customized for local program offerings. We seek information on the number and different types of available electronic programming guides. We also request information regarding the ownership of nationally distributed programming guides. Are these existing or planned electronic programming guides owned or affiliated with MVPDs? In addition, to what extent do electronic programming guides receive financial support from advertising, subscriber fees or a combination of both?

18. We also seek information on the extent to which MVPDs are now offering or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel basis) rather than programming service packages (i.e., tiers of programming services). How many cable systems and other MVPDs are technically equipped to offer customized programming packages at present? What would be required to allow operators to offer more customization than is currently available? What are the technical requirements that permit an MVPD to offer customized service? What are the economic, legal or other impediments to offering programming services in this manner?

19. Moreover, we seek information and comment regarding public, educational and governmental ("PEG") access and leased access channels. We specifically request data on the number of channels being used for each of these purposes 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. Do these channels provide any competition to the programming channels under the control of the cable operator?

20. We further seek information and analysis regarding the effect of increased programming costs on rates, especially for cable service.[24] Many cable operators cite rising programming costs as the reason for increased cable rates.[25] To what extent are increases in programming costs offset by increases in advertising revenues rather than by increasing subscriber rates? Should our existing rules for the regulation of subscriber rates be modified to provide incentives for the cable industry to recover increased program costs by raising advertising rates as well as or instead of subscriber rates? Are adjustments to our current rate rules appropriate or necessary? What effect, if any, are recent financial developments in professional sports (e.g., multi-billion dollar deal for rights to National Football League games, the purchase of sports teams by MSOs and broadcast interests) expected to have on the costs of sports programming and video programming in general? We seek information on these and other factors that affect programming costs for cable operators and other MVPDs. To what extent are the increased programming costs passed through to MVPD subscribers and to advertisers?

21. As in previous reports, we will update our assessment of our program access, program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers.[26] The program access rules also apply to OVS operators and common carriers in the same manner as they apply to cable operators.[27] Commenters are asked to provide information regarding the effectiveness of these rules. We request information on whether the coverage of the program access rules is appropriate and on any other issues of concern to video programming providers or MVPDs relating to the availability and distribution of programming.[28] In particular, we seek information on whether there have been any cases of MVPDs being denied programming when a satellite delivered service becomes terrestrially delivered, or being denied programming by non-vertically integrated programmers.

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[24]The Commission also is seeking information on the effect of programming license fees on cable rates in its 1998 Annual Survey of Cable Prices.

[25]*See 1997 Price Survey*, 12 FCC Rcd at 22758 ¶ 6; *1997 Competition Report*, 13 FCC Rcd at 1043, 1060-61 ¶¶ 11, 38.

[26]*1997 Competition Report*, 13 FCC Rcd at 1126-27 ¶ 169; *1996 Competition Report*, 12 FCC Rcd at 4432-39 ¶¶ 149-66; *1995 Competition Report*, 11 FCC Rcd at 2135-42 ¶¶ 157-72; *1994 Competition Report*, 9 FCC Rcd at 7520-22, 7528-36 ¶¶ 158-59, 173-98.

[27]47 C.F.R. §§ 76.1004, 76.1507.

[28]We also sought comment regarding program access issues in *Implementation of the Cable Television Consumer Protection and Competition Act; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming and Distribution and Carriage*, CS Docket No. 97-248, RM No. 9097, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 22840 (1997).

3. *Technical Advances*

22. The *1997 Competition Report* described various technological advances that may affect industry structure and competition in markets for the delivery of video programming.[29] For this year's report, we seek updated information on system upgrades, particularly to digital technology, and the time frames for completion of these upgrades. We request information regarding MSOs that have created digital tiers. How have cable systems increased their channel capacities by using digital tiers? For specific MSOs, we request data on the number and proportion of cable systems that provide digital tiers. We also request information on the number and proportion of subscribers for whom digital cable services are available and the number and proportion of subscribers that actually choose to subscribe to digital services. Are upgrades being undertaken only in specific geographic areas, or nationwide? Are upgrades being conducted mainly in response to competitive entry in the area, or are there other factors that determine where and when a system will be upgraded? Have planned system upgrades been canceled or scaled back? If so, why? We seek information on the feasibility of combining distribution technologies (e.g., DBS and SMATV) and data regarding MVPDs' current use of combined distribution technologies. We also solicit data on estimated roll-out or launch dates for new technologies, and on potential problems or other issues relevant to video distribution competition in a digital environment.

23. An important aspect of the technological developments taking place relates to the deployment of set top boxes, integrated receiver/decoders, or receivers that facilitate or differentiate MVPD service offering. We ask commenters to identify and describe developments in this part of the market, setting forth the following for each type of device: (a) its type and manufacturer(s); (b) its function and capabilities; (c) its advantages and disadvantages; (d) its cost to the company and price to the consumer; (e) the extent to which the device will be available for retail purchase as opposed to being made available through the service provider; (f) the actual and projected number of subscribers using each such device as of the end of June 1998, December 1998 and June 1999; and (g) the actual and projected average monthly purchases of each video and other service by the subscribers using each such box.

C. Competition in Local Markets

24. Currently, basic and cable programming service rates are deregulated where a cable operator faces "effective competition."[30] Effective competition exists: (1) where the franchise area is served by at least two unaffiliated multichannel video programming distributors, each of which "offers comparable video programming" to at least 50% of households, and at least 15% of households subscribing to programming services offered by an MVPD subscribe to services other than those offered by the largest MVPD; (2) where fewer than 30% of the households in the franchise area subscribe to the cable service of a cable system; (3) where a municipal cable system offers service to at least 50% of the households in the franchise area; or (4) when a local exchange carrier or its affiliate (or any MVPD using the facilities of such carrier or its affiliate) offers video programming services (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator, but only if the services so offered

[29] *1997 Competition Report*, 13 FCC Rcd at 1127-30 ¶¶ 171-77.

[30] *See* 47 U.S.C. § 543(a)(2). Under the 1996 Act, CPS rate regulation sunsets in March 1999. *See* 47 U.S.C. § 543(c)(4).

are comparable to the services provided by the cable operator.[31] We seek comment on whether the existing test for effective competition is an appropriate measurement of the existence of competition. Where commenters believe it is not the correct measure of competition, all or in part, we ask for suggested alternative means for determining competition.

25. In the *1996* and *1997 Competition Reports*, we examined several case studies of local markets where cable operators faced actual competition from MVPD entrants.[32] We seek updated information on the effects of actual and potential competition in these and other local markets where consumers have, or soon will have, a choice among MVPDs. What regulatory changes have facilitated head-to-head competition in local markets between or among MVPDs? What barriers still exist which inhibit further competition? Commenters are asked to provide specific data regarding areas where head-to-head competition exists between cable and other MVPDs, or among various types of MVPDs, and to contrast this with areas where effective competition has been determined to exist. How has such competition affected prices, service offerings, quality of service, and other relevant factors?

26. We also would like to gather information on video delivery competition for and within multiple dwelling units ("MDUs"). How common is it for consumers to have options to choose between or among MVPD services within a particular MDU? How comparable are the program offerings and prices charged by competing MVPDs serving MDUs in the same geographic area, and by cable and alternative MVPD services within the same MDU? How comparable are the program offerings and prices charged by MVPDs serving both MDUs and non-MDU customers in the surrounding area? Are MVPDs commonly providing multiple services to MDU customers? If so, what services are being provided, and in what geographic locations are the multiple services offered? Is the use of exclusive video service contracts in MDUs increasing or decreasing? How many exclusive service contracts, and how many so-called "perpetual" exclusive contracts, exist at present? What impact have the recent inside wiring,[33] over-the-air reception device ("OTARD"),[34] and cable bulk rate rules[35] had on MDU competition?

27. We request information regarding existing or potential regulatory impediments that may deter entry or prevent expansion of competitive opportunities in video program delivery markets. We also ask commenters to identify specific Commission rules, policies or regulations that ought to be reexamined in light of current competitive opportunities within multichannel video programming markets.

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[31] *See* Communications Act § 623(l)(1)(A), (B), (C) and (D), 47 U.S.C. § 543(l)(1)(A), (B), (C) and (D).

[32] *1997 Competition Report*, 13 FCC Rcd at 1130-40 ¶¶ 178-210; *1996 Competition Report*, 12 FCC Rcd at 4452-62 ¶¶ 201-33. In each of these cases the Commission determined that the statutory conditions were met.

[33] *See Telecommunications Services Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184; Cable Home Wiring*, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1998).

[34] *See Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59; *Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 19276 (1996).

[35] 1996 Act § 301(b)(2), 47 U.S.C. § 543(d).

III. PROCEDURAL MATTERS

28. 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 31, 1998, and reply comments on or before August 31, 1998. 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.

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

30. Further information on this proceeding may be obtained by contacting Marcia Glauberman in the Cable Services Bureau at (202) 418-7200 or TTY (202) 418-7172.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary