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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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

CS Docket No. 98-102

REPLY COMMENTS OF COMCAST CORPORATION

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Comcast Corporation ("Comcast" or "the Company") hereby submits its Reply to Comments filed pursuant to the Commission's Notice of Inquiry in the above-captioned proceeding (FCC 98-137, released June 26, 1998).

I. INTRODUCTION AND SUMMARY

Founded in 1963 with only 1,200 cable customers, Comcast now is a Fortune 500 company, employing 16,400 workers nationwide. Comcast provides cable television service to 4.3 million customers in 21 states, making Comcast the nation's fourth largest MSO. Upon completion of its acquisition of certain cable systems currently owned by Jones Communications, Inc., Comcast will become the nation's third largest MSO.¹

¹ Comcast is in the process of acquiring a controlling interest in Jones Communications, Inc., which owns cable systems serving approximately one million customers. The Jones acquisition will enable Comcast to achieve greater economies of scale in the delivery of both video programming and advanced communications and information services.

The majority of Comcast's cable systems are large, highly upgraded systems, clustered in urban and suburban areas, including communities in Southwest Michigan, New Jersey, Florida, Alabama, Tennessee, and Northern and Southern California, as well as in greater Philadelphia, Baltimore County and Indianapolis. Eighty percent of Comcast's customers are located in these ten geographic clusters, enabling Comcast to utilize its resources effectively and efficiently to provide higher quality video programming and improved customer service. Comcast's technologically advanced, regional customer service centers enabled Comcast to achieve a 99.5 percent on-time record in 1996, and lets the Company serve its customers better, faster and smarter.

In addition to cable television, Comcast provides high speed cable Internet access and content, through its deployment of the Comcast@Home service. Comcast also provides programming content through its majority ownership of QVC, Inc. and its controlling interest in E! Entertainment Television, Inc., and other programming investments, including The Golf Channel, Speedvision Network and Outdoor Life Network. Further, Comcast is an innovator in regional and local news, sports and public affairs programming through its Comcast SportsNet, CN8 and Comcast Network operations. The quality of Comcast's local programming is evidenced by the 14 Emmy nominations it has already received this year. Comcast also provides wired local exchange service in Florida and Maryland, and interexchange telecommunications services in more than a dozen states. Comcast Cellular's personal communications and digital services serve over 800,000 customers in Pennsylvania, New Jersey, Delaware and Maryland.

It is undeniable that the current record in this proceeding clearly shows competition in the multichannel video marketplace is thriving under the existing statutory regime. In fact, Comcast faces competition in its core video business from satellite providers in 100 percent of its markets, and terrestrial providers in 40 percent of its markets.

In response to this competition, Comcast, like other cable operators, is upgrading its systems to increase channel capacity, offer greater customer choice, and improve reliability and reception. In addition, as growth potential in the provision of analog video services becomes more limited, Comcast, like other cable operators, is deploying digital video, advanced information and communications services, and telephony services. To expand successfully into these new service areas, cable operators must retain and attract traditional video customers by offering a broad array of quality services at competitive prices. To that end, Comcast has structured its basic program service offerings generally to offer three or more levels of service, including low priced basic service. Comcast also has expanded its community involvement and service activities, and leads the industry in the provision of high-speed Internet access free of charge to schools and libraries.

Comcast has spent \$1.5 billion to upgrade its systems over the past three years. Eighty percent of its customers will be served by systems at 550 MHz or greater by the end of 1998, and 60 percent soon will be served by systems at 750 MHz or greater. The Company offers digital cable and high speed Internet access in seven markets, and, through Comcast Telecommunications, Inc. d/b/a Comcast Long Distance, provides intrastate and interstate long distance services to business and residential customers in more than a dozen states.

It is the growing level of competition that has been largely responsible for compelling Comcast's unprecedented upgrade investments and the increase in services offered to customers. Indeed, Comcast has not been in a position to recover the costs of these investments through regulated prices, because competition – even in those cases where it does not yet constitute effective competition under the statutory standard – has often driven its prices below the Commission's benchmark standards.

In making its report to Congress, the Commission must acknowledge that the competitive landscape is rapidly changing. Hundreds of millions of dollars are being spent by the cable industry to fulfill the goals of the Telecommunications Act of 1996, which has led to an increasing array of consumer choices and services that respond to the diverse interests of the American public. The Commission should now recognize that rates alone cannot stand as the single indicator of competition in the video marketplace. The policies underlying the 1996 Act, which seeks to establish a pro-competitive, deregulated market, militate against tilting the regulatory playing field against the cable industry at the very same time the industry is making the massive investments needed to prosper in a fully competitive marketplace. We believe the record should bring the Commission to the conclusion that federal cable policy should remain on the course charted in the 1996 Act, and that no additional legislative action is needed.

II. COMCAST FACES SIGNIFICANT COMPETITION IN THE DELIVERY OF VIDEO SERVICES.

The record in this proceeding clearly demonstrates that competition in the video marketplace is growing at an unprecedented pace. For consumers, this means more choices among distributors in the video marketplace, and more responsiveness to diverse consumer interests.

DBS continues to experience phenomenal growth, despite the Commission's previous predictions that its growth would level off this year.² DirecTV grew last year by 40 percent, and the company's president, Eddy Hartenstein, recently announced that it gained approximately "30 percent more customers for the first seven months of this year compared with the same period last year."³ DirecTV's service is now received in more than four million homes, which is sufficient to rank it as the nation's fifth largest multichannel video programming distributor ("MVPD"),⁴ and has further strengthened its marketing efforts by

² See Comments of Cox Communications, Inc., CS Docket No. 98-102, July 31, 1998 ("Cox Comments") at 10-12 ("Last year, DBS subscribership grew 40% . . . and DBS growth this year is running nearly 35% ahead of 1997."); Comments of NCTA, CS Docket No. 98-102, July 31, 1998 ("NCTA Comments") at 2, 8-11 ("High power DBS subscribership grew 3.28 million to 5.14 million between July 1997 and July 1998. This amounts to a 56.6% growth rate. . . . In 35 states, DTH satellite subscribership is now over 10% of all television homes. Indeed, in 15 states, DTH satellite penetration exceeds 15%.").

³ Monica Hogan, *Sun Shines on DBS in July*. MULTICHANNEL NEWS, Aug. 17, 1998 at 65.

⁴ Given the nationwide presence of DBS, its potential subscriber growth far exceeds that of any individual cable operator.

arranging with several regional Bell operating companies to market DirecTV's programming service to telephone subscribers.⁵

Comcast faces growing competition from DBS providers, including Primestar, Echostar and DirecTV, in 100 percent of its markets. For example, from first quarter 1996 to first quarter 1998, DBS penetration increased 279% in Philadelphia, 270% in Union, New Jersey, and 231% in Sacramento, California.⁶ As the costs to customers for DBS equipment, installation and service fall,⁷ and consumer awareness of DBS grows close to 100 percent, it has become increasingly clear that both economically and practically, DBS is a reasonable and effective substitute for cable.⁸

Local exchange telephone companies also have significantly bolstered their competitive presence in the video marketplace, using both wireless and wireline technologies.

⁵ Monica Hogan, *DirectTV's telco partners dial 'M' for marketing*, MULTICHANNEL NEWS, August 24, 1998, p. 10.

⁶ Comcast surveyed its franchise areas to confirm this subscriber growth. These figures are consistent with the statewide DBS subscriber growth reported in SKYReport (extrapolated) in the same time period for Pennsylvania (181%), New Jersey (327%), and California (211%).

⁷ Echostar's Dish Network is currently offering professional installation for only \$49. This is a 75% reduction from the \$200 installation fee it has charged previously, and is now very close to the cost of a basic cable installation. See Exhibit 1. Echostar also plans to offer customers free second DBS satellite dishes to help promote its local channel service. Monica Hogan, *Echostar gives away dish for local service*, MULTICHANNEL NEWS, Aug. 31, 1998, p. 12. In addition, DirecTV Executive Vice President Larry Chapman recently announced that DirecTV will offer high-definition digital satellite service nationally in the fall, and that set-top boxes, which Chapman described as "a cable replacement product," will sell in the \$500 to \$800 range. *DTV Broadcast Launch To Get Assist From DBS*, SATELLITE WEEK, Aug. 17, 1998. See also NCTA Comments at 19.

⁸ See NCTA Comments at 13 (quoting Department of Justice in *United States v. Primestar, Inc.*, No. 1: 98CV01193, Complaint, ¶ 63 (D.D.C. May 12, 1998)("consumers view [cable and DBS] as similar and to a large degree substitutable").

With programming line-ups comparable to cable, massive budgets and longstanding ties to the community, these local exchange telephone companies are well positioned to compete head-to-head with cable. Indeed, in recognizing the strong competitive force that telephone companies exert, Congress amended the standards for determining effective competition to include any area where a LEC or its affiliate offers comparable video programming by any means.⁹

Comcast now faces terrestrial competition in 40 percent of its markets. For example, Comcast faces competition from Ameritech in 14 Michigan communities; from Bell Atlantic in Dover Township, New Jersey; from Knology in Charleston, South Carolina and Panama City, Florida;¹⁰ from BellSouth in Georgia and Florida; and from Pacific Bell in Inland Valley communities of California. Moreover, SNET is preparing to launch its competitive cable service in Comcast franchise areas in Connecticut this year.¹¹

In addition, wireless and SMATV operators continue to have a significant competitive presence, especially in the market for multiple dwelling units, where they typically enter into

⁹ 47 U.S.C. § 543(l)(1)(D).

¹⁰ Knology, whose investors include ITC Holdings, Inc. and SCANA Communications, Inc., a subsidiary of SCANA Corporation, a \$4.9 billion energy-based holding company whose other subsidiaries include regulated electric and natural gas utility operations, won a cable franchise in Charleston, S.C. on May 29, 1998, and plans to overbuild Comcast's system there with a 150-channel, 750 MHz, two-way system, upgradable to 1,000 MHz. Kent Gibbons, *Fast-Growing Knology 'Scares' Cable*, MULTICHANNEL NEWS, June 22, 1998 at 6.

¹¹ In addition, RCN has applied for and received a certification from the Commission to operate an open video system in many communities served by Comcast in greater Philadelphia and New Jersey. *RCN Telecom Services of Philadelphia, Inc.*, Certification to Operate an Open Video System, DA 98-1153, 1998 FCC LEXIS 2917 (rel. June 15, 1998); *RCN Telecom Services of New Jersey, Inc.*; Certification to Operate an Open Video System, DA 98-1530, 1998 FCC LEXIS 3905 (rel. July 31, 1998).

exclusive agreements with building owners or home owners' associations. These companies are offering packages of telephony, data and video services to residential and commercial developments.¹² Wireless and SMATV growth promises to increase as their joint venture with DirecTV and other satellite providers helps to strengthen their position in the market, and increase their penetration.¹³

Clearly, the amount of competition that Comcast currently faces in its core multichannel video business is substantial, well-financed, and aggressive. Even in those geographic markets where "effective competition" under the statutory standard does not yet exist, competition has a meaningful effect on Comcast's investments and consumer responsiveness, as outlined below.

III. THE CABLE INDUSTRY'S ABILITY TO SUCCESSFULLY PROVIDE NEW AND EXPANDED SERVICES DEPENDS UPON SATISFIED VIDEO CUSTOMERS.

Cable's growth potential in the market for traditional analog video services is relatively limited compared to future opportunities in the rapidly growing markets for digital video and advanced communications and information services.¹⁴ At the same time, large numbers of

¹² RCN, for example, currently offers its customers bundled packages of video, Internet and telephony service in certain communities in the Boston suburbs, and plans to offer similar packages in all of the markets they serve. See RCN Web Page (visited August 26, 1998) <http://www.rcn.com/investor/news/index> ("goal is becoming leading provider of Internet, phone and cable to residential market from Boston to Washington in East, and San Francisco to San Diego in West").

¹³ NCTA Comments at 34 (quoting Henry Burkhalter, CEO of Wireless One, *Wireless cable sees 2-way as chance to renew industry*, COMMUNICATIONS DAILY, July 10, 1998, p. 6).

¹⁴ Cable's rate of subscriber growth in the video marketplace has leveled off dramatically in the last several years, compared with its growth in the Seventies and Eighties. For example, from 1972 to 1982, the number of cable subscribers grew 250 percent, compared

consumers are spending less time "channel surfing" and more time "surfing the net."¹⁵ In recognition of their need to expand their offerings to meet competition and changing demand, cable operators nationwide are upgrading their facilities to offer digital programming service, Internet access and telephony.¹⁶ In this respect, Comcast is responding to competition and the changing video marketplace by offering a broad array of choices to benefit its customers.

Comcast has been a leader in investing in, trialing and deploying new broadband services, a position that was ratified by Microsoft's non-voting \$1 billion investment in 1996. This vote of confidence in the cable industry's future broadband opportunities, followed by

with 24 percent from 1989 to 1997. *Compare Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Notice of Proposed Rulemaking, 94 F.C.C.2d 678 (1983), with *Annual Assessment of the Status of Competition in Markets for the Delivery of Programming*, Fourth Annual Report, 13 FCC Rcd 1034 (1998); see also Cox Comments at 10 (comparing 40 percent DBS growth to Cox's 2.7 percent for same time period).

¹⁵ According to a Nielsen survey of over 5,000 homes for America Online, homes with internet or online access watch 15 percent less television per week than non-Internet homes. *Communications Daily*, Aug. 13, 1998 at 6. Indeed, for many teenagers, access to the Internet is of greater importance than access to television. *Comments of Economic Strategies Institute*, CC Docket No. 98-15 (response to the Petition of the Alliance for Public Technology).

¹⁶ "CATV's long term viability depends more on its performance in the telecommunications and interactive services than in TV." Charles Mason, *Where are CATV's trump cards?*, AMERICA'S NETWORK (June 1, 1998). Telecommunications is a larger market than television and interactive services will likely surpass traditional television services in 2000. *Id.* "A carrier that can come to a customer and offer bundled communications services will find success. Such services would likely include entertainment, basic and advanced telecommunications, including Internet access and other related communications services." *Id.*; see also Mark Clothier, *Atlanta tech: Wednesday focus on technology and telecommunications in Metro Atlanta*, THE ATLANTA JOURNAL AND CONSTITUTION, Aug. 12, 1998, p.4C ("Although the penetration rate has slowed, about 65 percent of U.S. homes have cable television. To increase revenue, companies are trying to sell new services, such as Internet access and telephone service . . ."); see also NCTA Comments at 36-37 (cable's capital expenditures in 1998 exceeded \$6 billion, nearly three times as much as in 1992).

the recent cable system acquisitions by AT&T and Paul Allen,¹⁷ dramatically confirm that the future growth of the cable television industry will be in the competitive advanced communications and information service arenas.

The ability of Comcast, or any cable operator, to enter successfully the advanced communications and information services marketplace is contingent upon its ability both to compete effectively with other technologies and to retain and attract customers for its traditional cable television video services. Cable operators must maintain a growing base of customers for video services in order to introduce such customers to new advanced services. This has created a new and distinct competitive pressure on cable operators to ensure that customers remain satisfied with the programming choices and prices for their traditional video services. To the extent that a cable operator's programming and pricing policies for traditional video services are responsive to the concerns and preferences of existing or future customers, then the opportunity for future growth into advanced communications and information services is substantially improved. The Commission's report to Congress should recognize this new and distinct competitive pressure on cable operators' rates and service offerings.

¹⁷ Microsoft co-founder Paul Allen purchased Charter Communications, the nation's tenth largest MSO, for \$4.5 billion (\$3,800 per subscriber) on July 29, 1998, shortly after purchasing Marcus Cable for \$2.8 billion in June. *Microsoft's Allen makes second major cable investment, buying Charter*, COMMUNICATIONS DAILY, July 31, 1998. On June 24, 1998, AT&T reached a complex \$68-billion deal with Tele-Communications, Inc. to acquire access to TCI's 14.4 million cable customers. *AT&T and TCI merge in \$68 billion deal for local entry using cable*, COMMUNICATIONS DAILY, June 25, 1998.

IV. COMCAST IS RESPONDING TO THE INCREASINGLY COMPETITIVE AND DYNAMIC COMMUNICATIONS MARKETPLACE.

Increased competition means more choices for consumers. Not only do consumers have a greater number of video providers from which to choose, these providers are offering a greater variety of video programming services, increased flexibility in levels of video services, and additional non-programming services. Comcast has invested heavily to provide its customers with an increased number of programming services and more levels of basic service, as well as additional services, including advanced communication and information services, and telephony.

A. Comcast Is Investing In New Service Offerings For Subscribers, Including System-Wide Upgrades, Digital Service, High Speed Internet Access And Telephony.

Comcast has invested substantially in the upgrade of its cable facilities and expansion of its service offerings to include digital, advanced broadband services, and local and interexchange telephony. During 1998 alone Comcast plans to spend more than \$700 million to upgrade and rebuild the company's cable systems. Comcast's investment in innovative, new services fulfills the goals of the Telecommunications Act of 1996,¹⁸ and further demonstrates the benefits to consumers resulting from increased competition.

¹⁸ Congress' stated goal in enacting the Telecommunications Act of 1996 was "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." H.R. Conf. Rep. No. 104-458 at 1 (1996).

1. System Upgrades

Comcast already has spent over \$1.2 billion to upgrade most of its cable systems nationwide, deploying fiber optic cable and improving the quality of the existing broadband network. Consequently, 70 percent of Comcast's customers presently are served by systems at 550 MHz or greater and will be capable of receiving new offerings such as digital video service, high-speed Internet access, and telephony services. Consistent with its Social Contract with the Commission, by March 31, 1999, 80 percent of Comcast's customers will be served by systems of 550 MHz or greater, and 60 percent will be served by systems of at least 750 MHz.¹⁹ Examples of Comcast's upgrade investments from 1997 to the present include:

- Southeast Michigan. Comcast spent over \$110 million in 1997 to bring over 175 analog and digital channels of video programming and high speed Internet access to 500,000 customers in 98 communities;
- Chesterfield County, Virginia. Comcast is spending more than \$32 million to deploy 437 miles of fiber optics to provide 70,000 Chesterfield residents with improved reception, 34 new channel options and high speed Internet access;
- Charleston, South Carolina. Comcast spent approximately \$42 million in 1998 to provide 80,000 homes with increased channel offerings, improved video service and high speed Internet access; and

¹⁹ *Social Contract for Comcast Cable Communications, Inc.*, Order, 13 FCC Rcd 3612 (1997).

- Orange County, California. Comcast will spend \$47 million in 1998, deploying 1,800 miles of fiber-optic cable to provide improved video reception and reliability, increased channel offerings and Internet access to more than 80,000 customers.

2. Digital Cable Deployment

Comcast's digital service includes over 175 digital and analog channels with sharper video images, CD-quality video and a host of other services including an on-screen Interactive Program Guide, 40 pay-per-view channels, 28 "multiplexed" HBO and premium services, and commercial-free music channels in a variety of formats. The digital service also provides improved reliability and consistent, high quality reception. It is currently available to 1.5 million households located in Orange County, California; Greater Philadelphia, Pennsylvania; Baltimore County, Maryland; parts of Middlesex, Union, and Essex Counties, New Jersey; Sacramento, California; Indianapolis, Indiana; and Southeast Michigan. Comcast projects that it will have 50,000 digital cable service customers by the end of 1998.

3. High Speed Internet Service

Over the course of the last 18 months, Comcast has begun to offer high-speed cable modem services to over 865,000 residential customers in seven markets through deployment of its Comcast@Home service. Comcast@Home delivers 24-hour, unlimited broadband Internet access, plus national and local content, directly to a user's personal computer via a coaxial cable connection, a cable modem and automatic access to Internet browsers. Comcast's cable modems provide access to the Internet at one megabyte per second or more, a rate that is one hundred times faster than traditional dial-up phone modems and

approximately 15 times faster than an integrated service digital network ("ISDN") line.

Comcast@Home also provides local content, e-mail, personal web space, chat rooms and professionally trained toll-free customer support 24 hours a day, seven days per week.

Currently, Comcast@Home has 25,000 customers.

4. Local Exchange and Long Distance Service

Subsidiaries of Comcast Telephony Communications Holdings, Inc. are certificated to provide local exchange services in more than a half dozen states and currently serve customers in Florida and Maryland with voice-grade access services, unlimited local usage, intraLATA toll usage, CLASS/custom calling features, and other local exchange services. Additionally, Comcast Telecommunications, Inc. d/b/a Comcast Long Distance is certificated to provide intrastate and interstate long distance services in nearly forty states nationwide, and currently serves business and/or residential customers in more than one dozen states.

B. Comcast's Traditional Video Services Are Priced Below Benchmark Levels And Tailored To Meet Subscriber Needs.

1. Below-Benchmark Rates

Almost one-half of Comcast's regulated systems' rates are below benchmark and the number of below-benchmark systems has increased steadily since 1995.²⁰ The Commission

²⁰ As of June 30, 1997, 47.2 percent of Comcast's regulated systems were below benchmark, up from 44.4 percent in 1996, and 41.2 percent in 1995. *See, e.g., Comcast's Response to 1997 Annual Survey of Cable Industry Prices, Implementation of Section 3 of the Cable Television Consumer Protection Act and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment,*

created the benchmark formula to approximate prices in competitive markets.²¹ Thus, competition effectively has constrained prices, notwithstanding other economic factors, and kept rates below even the Commission's approximation of competitive pricing. Indeed, Comcast's price increases for regulated services have been reasonable. From July 1997 to July 1998, Comcast's retail price for regulated services²² increased by \$1.12, or 4 percent, with an average increase of approximately two channels for that period. Moreover, Comcast has not included all of its upgrade costs in regulated rates, even though this is permissible using the FCC's Cost of Service Form 1235.

2. Increased Choice

Comcast is an innovator in offering low-priced basic services and optional new product tiers ("NPTs"), increasing the choices available to its customers. Comcast generally offers customers three levels of basic service, Low-Priced Basic, a CPS Tier and a NPT. Low-Priced Basic generally includes all of the local broadcast signals, C-SPAN, PEG, and The Comcast Network or QVC, and is priced at between \$9 and \$12. Customers have the

FCC 97-409. The systems surveyed by Comcast for its Response included 36 regulated systems and excluded eight systems acquired after the relevant inquiry time periods and for which historical data was lacking.

²¹ *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119 (1994). The Commission developed the benchmark formula to approximate prices in competitive markets. *Id.* The benchmark formula was intended to reduce rates by 17 percent so that the per channel prices for both basic and tier services did not exceed the rates charged in competitive markets. *Id.*

²² The rates referred to here are the subscriber-weighted average retail prices based on the total monthly amount the typical subscriber pays in each system for regulated programming, converter box, and remote, weighted by the number of subscribers in each system.

option of taking only this level of service. Comcast's CPS Tier generally includes more established cable programming networks, such as ESPN, CNN, Lifetime, MTV, A&E, and Discovery, and is priced, together with the Low-Priced Basic, between \$25 and \$30.

Comcast's unregulated NPT generally offers 8 to 9 newer programming services such as Animal Planet, Turner Classic Movies, The History Channel, The Sci-Fi Channel, Home & Garden, as well as TBS.

Comcast has increased its programming service options to respond to competition and to satisfy those consumers who want a smaller, low-priced basic, as well as those who prefer a larger selection of programming services. Government efforts, either Federal or local, to artificially create service tiers or categories, cannot possibly meet consumer needs better than a market-driven cable operator whose successful expansion into new services depends upon retaining and attracting customers in the face of growing competition.

C. Comcast Continues To Strengthen Its Roots In Local Communities

In addition to increasing customer choice in video programming and expanding into advanced services, Comcast has increased its involvement in the community and in education to improve its community relationships. This strategy of improved focus on our local communities is also motivated in large part by the need to develop competitive distinctions in the face of increased competition.

1. Comcast Communities

Comcast is producing original local and community programming in its franchise areas. In Michigan, for example, this programming includes local sports, interactive shows, and "Kids' Block," with programs focused on homework and other childrens' programming. In addition, in 1996 Comcast launched CN8, The Comcast Network, an original, high-quality local-interest program, to 1.2 million subscribers in New Jersey and Pennsylvania, and has since extended this service to its Baltimore-area systems.²³ CN8 represents an investment in providing precisely the kind of quality programming of local and regional interest that is increasingly unavailable from broadcasters.²⁴ In all of its markets, Comcast provides free cable-related service to municipal buildings, schools and libraries, and donated \$30 million worth of air time to non-profit for public service announcements in 1997. In addition, Comcast co-sponsors numerous community events, including "Philadelphia Cares," a massive volunteer program devoted to cleaning up Philadelphia's public schools; "Drug-Free Youth," "Save the Music," and "Cops for Kids."

2. Comcast Education

Through Cable in the Classroom, Comcast has connected over 5,000 schools to over 550 hours of commercial-free cable programming. In addition, Comcast led the cable

²³ In Michigan, Comcast is launching Comcast Network Television, which provides original local and community programming including "Kids Block," with homework shows and other childrens' programming and other interactive shows.

²⁴ So far in 1998 Comcast Original programming received three nominations and CN8 five more. Comcast SportsNet has received six nominations. In 1997, Comcast Original Programming received two nominations and one Emmy award.

television industry in its 1996 commitment to provide free cable modem service to every K-12 school, public and private, in every service area where cable modem service is deployed. Comcast has connected over 320 schools by Comcast cable modems as of July 31, 1998. In fulfillment of its pledge at the Presidents' Volunteer Summit, Comcast has provided over 40 public libraries with free cable modems as of July 31, 1998, and plans to connect 250 public libraries. In further support of its commitment to education, Comcast conducts free Internet training classes for parents, students, educators and senior citizens. Comcast also developed its own award-winning Web page devoted to education, www.onlineschoolyard.com, which provides links to over 600 of the best K-12 education sites on the Internet.²⁵

3. Comcast's MercerNet

Comcast is also building its public-private partnerships. For example, in 1997, Comcast launched MercerNet, a full service, state-of-the-art broadband educational network, linking 14 educational institutions in Mercer County, New Jersey. MercerNet connects the County's 12 public high schools, Mercer County Community College, and the Invention Factory Science Center. MercerNet provides enhanced collaboration and sharing of resources for courses, staff development, video conferencing, adult education, business and community use, along with high speed data transmission and high speed Internet access. Mercer County

²⁵ Sam Vincent Meddis, *Folk Music Fun and Dinosaur Discovery*, USA TODAY, July 15, 1997, p. 5D (recommending "onlineschoolyard" as a good Internet site to fill kids' summer days).

has a very diverse population, including inner city, suburban, and nearly rural communities.²⁶

Chairman Kennard lauded MercerNet as a great example of the public and private sector working together to bring advanced communications capability into the classroom in his recent remarks to the National Urban League.²⁷

V. UNIQUE COST FACTORS MAKE CABLE UNLIKE OTHER COMMUNICATIONS INDUSTRIES.

Any study of video competition must analyze a myriad of factors, and cannot be based solely on a simplistic analysis of whether prices are immediately falling or rising. A careful study of competition must examine changes in service offerings year to year, variations in the amount of capital investment, and fluctuations in the costs of providing service. It is, for example, analytically misleading to draw any inferences from a comparison of cable television industry prices to prices in the telecommunications and computer markets, where both fixed and variable costs have been declining.

²⁶ For example, Mercer County is home to both Trenton and Princeton, which had per capita income (reported in the 1990 Census) of \$11,018 and \$39,767, respectively.

²⁷ Remarks by William E. Kennard, Chairman, Federal Communications Commission, to the National Urban League, Philadelphia, PA (Aug. 3, 1998).

A. Cable Operators Are Experiencing Increased Costs Due To Upgrades And Increased Program License Fees.

1. Capital Investments

Cable operators must upgrade their systems to provide digital channel lineups that are comparable to those offered by multichannel video competitors. For example, DirecTV, the fastest growing competitor to cable, offers subscribers over 120 channels of programming.²⁸ In addition, as cable franchises come up for renewal, most local franchising authorities require upgrades as a renewal condition.²⁹ It is undisputed that cable's customers are benefiting from the upgrades that provide improved picture quality, increased channel offerings, and advanced communication and information services.³⁰

Pursuant to Comcast's Social Contract with the Commission, Comcast has committed that by March 31, 1999, 80 percent of cable subscribers will be served by systems with 550 MHz capacity and 60 percent of its cable subscribers will be served by systems with 750 MHz capacity. Comcast spent \$800 million in 1996 and 1997 on upgrades and predicts that it will have spent an additional \$700 million in 1998 -- for a total of \$1.5 billion in the past

²⁸ See Comments of DirecTV, CS Docket 98-102, filed Jul. 31, 1998, at Exhibit 1.

²⁹ See, e.g., Monica Hogan, *Cablevision promises \$160M in Boston franchise renewal*, MULTICHANNEL NEWS, May 18, 1998, p.3 (renewal calls for Cablevision to upgrade every neighborhood in the city); Manuel Perez-Rivas and Paul Farhi, *Montgomery to upgrade cable system, New agreement includes \$140 million overhaul*, THE WASHINGTON POST, Feb. 10, 1998, p. B1.

³⁰ Under the Commission's instructions for FCC Form 1235 (cost of service filing for upgrades), upgrades are presumed to benefit the public if the upgrade increases usable bandwidth to at least 550 MHz capacity with upgrade capability to 750 MHz, fiber to node or beyond, and no more than 1,500 homes per node. See *In the Matter of Cox Communications San Diego, Inc.*, DA 98-1536, 1998 FCC LEXIS 3949 (rel. 8/4/98) at ¶ 8.

three years – upgrading and rebuilding its cable systems. In upgrading its systems, Comcast relies primarily on national manufacturers for supplies, material and equipment, the cost of which has increased because of increased labor demand and other factors.

2. Increased Program License Fees

Cable programming networks are spending more to improve the quality of their programming to better compete with broadcast networks.³¹ In addition, production costs generally are up throughout the industry.³² Programmers have been passing most of these increased costs through to cable operators.³³ Even cable's multichannel competitors have not been immune from these higher programming costs and the pressure to raise subscriber rates.³⁴

³¹ Linda Moss, *Basic Nets: Quality Costs Money*, MULTICHANNEL NEWS, June 8, 1998 at 3, 18 ("Basic cable spent \$4 billion on programming in 1997, compared with \$482 million roughly a decade ago, in 1986 . . . Original programming is one of the priciest investments for any programmer . . ."); see also NCTA Comments at 43 ("Cable networks spent more on originally produced movies and programming, on additional and renewed sports rights, and on syndicated programming.").

³² Even the broadcast networks have made major cuts in their staff to effect cost savings to offset the substantial increases in the costs they pay for programming. Eben Shapiro, *CBS considers cost-cutting measures as programming expenses skyrocket*, THE WALL STREET JOURNAL, Aug. 26, 1998, p. B2.

³³ *Id.* ("TNT said it will raise its license fee by 7 percent next year, on an annualized basis for a four-year contract, from its current 55 cents to 60 cents per subscriber per month"); see also NCTA Comments at 43 ("Programming expenditures by basic cable networks increased from \$3.0 billion in 1995 to \$4.0 billion in 1997, and much of this increase (which resulted in significant increases in viewership) was passed on to cable operators.") (citing Cable Television Advertising Bureau, CABLE TV FACTS, 1998, p. 5).

³⁴ Bell Atlantic reportedly increased rates in its Dover, New Jersey cable system (where it directly competes with Comcast) by 74% at the end of 1997. *Anstrom blames 'staggering betrayal' by telcos for Telecom Act*, COMMUNICATIONS DAILY, Jan. 29, 1998.

In particular, license fees for certain sports programming have been increasing significantly.³⁵ As sports organizations have increased the price of distribution rights, the increases have filtered through to the cable industry in the form of increased license fees. For example, the NFL and NBA recently increased the price of distribution rights by 100 to 150 percent.³⁶ As a result, ESPN reportedly has sought 20 percent increases in license fees, which could then exceed \$1.00 per subscriber per month.³⁷ In addition, the NHL recently announced that it has entered into a new five year, \$600 million distribution deal with ABC and ESPN, increasing its distribution rights fees 260 percent over the prior contract.³⁸ Comcast's experience reflects these dramatic increases. Among our most widely carried national and regional sports networks, the average license fee increase has exceeded 20 percent and

³⁵ A factor worth noting when weighing the impact of sports rights costs is the movement by almost all regional sports networks over the past few years from premium channels (at \$8 - \$14 per month) to basic (as part of the cable programming service or new product tier). While the move has contributed to basic rate increases, it has effectively addressed Congressional concerns regarding sports migration and has also dramatically expanded viewer access to extensive coverage of local sports. More importantly, these changes generally have met with customer approval.

³⁶ See, e.g., Leslie Cauley, *To Pay the NFL, ESPN Plans a Blitz of Football Shows*, THE WALL STREET JOURNAL, Aug. 17, 1998, p.B1; Leslie Cauley, *ESPN's New Football Deal is Expected to Boost Rates for Cable TV Next Year*, THE WALL STREET JOURNAL, Jan. 16, 1998, p. B6; Stephen McClellan, *NBA Not Quite a Loss Leader for NBC, Turner*, BROADCASTING & CABLE, Nov. 17, 1997, p. 14.

³⁷ Linda Moss, *Basic Nets: Quality Costs Money*, MULTICHANNEL NEWS, June 8, 1998, p. 18.

³⁸ Joe Schlosser, *Disney grabs the puck - Owner of ABC, ESPN pays \$600 million for rights; Fox opts not to renew current deal*, BROADCASTING & CABLE, Aug. 24, 1998, p. 6; Leonard Shapiro, *New NHL TV Deal Is Set To Be Announced - ABC/ESPN's \$600 Million Deal Supplants Fox*, THE WASHINGTON POST, Aug. 22, 1998, p. C3 ("The NHL will receive \$120 million a year from ABC (\$50 million) and ESPN (\$70 million), about 2.6 times more than ESPN (\$14 million) and Fox Sports (\$31 million) paid under the current contract.").