

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

In the Matter of)
)
Annual Assessment of the Status of) CS Docket No. 00-132
Competition in Market for the Delivery)
of Video Programming)

NOTICE OF INQUIRY

Adopted: July 25, 2000

Released: August 1, 2000

Comment Date: September 8, 2000

Reply Comment Date: September 29, 2000

By the Commission:

I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to annually report 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 the Commission in gathering data and information on the status of competition in markets for the delivery of video programming for our seventh annual report ("2000 Competition Report"). The Commission will report on the current state of competition and report on changes in the competitive environment since our *1999 Competition Report* was submitted to Congress.²

2. We seek information that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and its effect on the cable television industry and consumers. We are interested in evaluating the extent to which consumers have choices among video programming distributors and delivery technologies. We seek to compare video distribution alternatives available to consumers. In particular, we seek data that will allow us to compare video programming offerings, prices for programming services and associated equipment, and any other services provided (e.g., telephony, data access). Industry members, interested parties, and members of the public should submit information, comments, and analyses regarding competition in markets for the delivery of video programming. We ask commenters to address one or more of the following questions:

- Who are the competitors in the markets for the delivery of video programming?
- What are the barriers to entry and consumer choice in the market?

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. 99-230, Sixth Annual Report, 15 FCC Rcd 978 (2000) ("1999 Competition Report").

- What is the current market structure (including horizontal concentration and vertical integration)?
- What have been the most significant changes or developments in the market over the past year?
- What are your projections for the future development (including technical advances) in the market?
- What positive or negative effect do existing statutory provisions and Commission regulations have on the market?

3. In order to facilitate our analysis of competitive trends over time, we request data as of June 30, 2000, and ask parties, to the extent feasible, to submit data and information that is current as of that date. Comments submitted in this proceeding will be augmented with information from publicly available sources. In addition, we expect to use data collected in recent Commission proceedings and reports such as the broadband inquiry pursuant to Section 706, the annual report of cable television systems (Form 325), and the annual report on cable industry prices.³

II. MATTERS ON WHICH COMMENT IS REQUESTED

A. Competitors in Markets For the Delivery of Video Programming

4. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") service, home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and over-the-air broadcast television service.

5. We seek to evaluate video programming distributors in the context of an overall video programming marketplace. For this assessment, we solicit data and information that will show how broadcast television, cable television, telephone, satellite, equipment suppliers and other competitors 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' markets. We request data that measures the audience reach of large video programming distribution firms as well as their control over the video market and information on the ability of video distributors to expand into new markets such as local telephony and data services.

³ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, (1999) at 2406 ¶ 20 ("Broadband Inquiry"); *Broadband Today*, A Staff Report to William E. Kennard, Chairman, Federal Communications Commission, Oct. 1999, <<http://www.fcc.gov/csb/>>. *1998 Biennial Regulatory Review, Annual Report of Cable Television Systems, Form 325, filed pursuant to Section 76.403 of the Commission's Rules*, CS Docket No. 98-61, Report and Order, 14 FCC Rcd 4720 (1999). *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, FCC 00-214, (released June 15, 2000) ("Price Report").

6. Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. Beginning with the 1992 Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), Congress removed several barriers to competition.⁴ The Telecommunications Act of 1996 ("1996 Act") seeks to extend the pro-competitive provisions of the 1992 Act and to establish a "pro-competitive de-regulatory national policy framework" for the telecommunications industry by increasing opportunities for firms not traditionally associated with the provision of video services to enter into the video marketplace.⁵ The 1996 Act repealed the prohibition against an entity holding attributable interests in a cable system and a local exchange carrier ("LEC") with overlapping service areas⁶ as well as removing regulatory barriers to the entry of public utility holding companies into telecommunications, information services.⁷

7. For this year's report, we seek comment and information on the extent to which changes in the Communications Act and the Commission's rules have encouraged new competitors in the market for the delivery of video programming. We also seek comment on any remaining, or impending, statutory or regulatory barriers to new entrants in the video market. For example, the prohibition on cable exclusivity in the program access rules ceases to be effective on October 5, 2002, unless the Commission finds that the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.⁸ The Commission is required to begin a proceeding to review these rules in 2001, therefore, we seek comment on the standards that should be employed in this review and on the process for undertaking it

8. In addition, Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. We seek, through data gathered in this proceeding, to determine if the cable industry has reached the benchmarks specified in this provision and seek comment on how the requirements of this provision should be met.

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992). The 1992 legislation was intended "to encourage competition from alternative and new technologies, including competing cable systems, wireless cable, direct broadcast satellites, and satellite master antenna systems." House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 27. See also Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong. 1st Sess. (1991) at 18. To accomplish this goal, the 1992 Act *inter alia* prohibited exclusive franchises and established program access, channel occupancy, and program carriage rules.

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996). See also H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996) and Communications Act § 651(a), 47 U.S.C. § 571(a).

⁶ See Communications Act § 652(d), 47 U.S.C. § 572(d). Under the statute, there are no restrictions on LECs establishing new cable systems. However, Section 652(a) of the Communications Act prohibits LECs or their affiliates from acquiring directly or indirectly more than a 10% financial interest, or management interest, in any cable operator within its telephone service area. See Communications Act § 652(a), 47 U.S.C. § 572(a).

⁷ See *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*") at 4410-4411 ¶ 95.

⁸ See Section 628(c)(5) of the Communications Act, 47 U.S.C. § 548 (c)(5).

9. As in previous reports, we seek factual information and statistical data about the current status of incumbent video programming distributors and any changes that have occurred during the past year.⁹ For each video programming distribution firm, we seek data and fact-based comments on the following topics:

- The number of homes passed by wired technologies
- The number of homes capable of receiving service by wireless technologies¹⁰
- The number of video distribution firms in a given industry
- The number of subscribers and penetration rates¹¹
- Channel capacities and the number, type, and identity of video programming channels offered

10. We seek the following financial information for each video distribution firm:

- 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
- Capital expenditures

⁹ See *Competition Reports, 1994-1999: 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"); *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"); *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"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 98-102, Fifth Annual Report, 13 FCC Rcd 24284 (1998) ("1998 Competition Report"); and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, 15 FCC Rcd 978 (2000) ("1999 Competition Report").

¹⁰ This includes the number of line-of-sight homes for distribution technologies that require line-of-sight for reception.

¹¹ 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, and near video-on-demand).

11. In addition, we seek information and analysis on the degree to which viewers or consumers consider the different types of video programming distributors to be substitutes. We request any information available on the extent to which customers have switched from one provider or technology to another one. We request that commenters provide information on those factors responsible for the switch, 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. Finally, we invite comment on a variety of issues associated with specific segments of the video programming distribution industry as well as any other relevant comments.

1. Cable Television

12. Last year, we reported that franchised cable operators had approximately 67 million subscribers and an 82% share of the multichannel video programming distribution market.¹² We also reported increases in cable subscribership, channel capacity, and viewership. Have these increases recurred this year? We seek to update and refine our report on the performance of the cable television industry and request data and comments on the current state of competition in this segment of the video programming distribution market. We invite comment and request data on cable television's financial performance, capital acquisition and disposition, system transactions,¹³ rates, programming costs, subscribership, viewership, and new service offerings.

13. Over the past twelve months, the Commission has promulgated and revised a number of rules that affect the cable television industry. The recently revised cable horizontal ownership rule, for instance, regulates the number of cable subscribers an entity may reach (a 30% share of nationwide cable, DBS and other video programming subscribers).¹⁴ The Commission also revised the method for identifying attributable cable ownership interests by calculating total horizontal ownership by counting nationwide subscribers of cable, direct broadcast satellite (DBS) and other multi-channel video programming distributors (MVPDs), not just cable homes passed. We seek comment on the impact of these revised rules on competition in the cable television market.

14. Mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments affect distributors' delivery of video programming. To the extent national concentration has increased or decreased for specific cable and other video programming providers since the implementation of the revised horizontal ownership rule, we ask commenters to discuss the reasons for such changes. We seek updates on the status of these mergers and transactions. To facilitate a comparison and render the most accurate picture of the video marketplace, we request, in addition, information regarding transactions (actual or announced transactions) involving noncable video programming providers. We request the following information:

- Month and year of transaction

¹² See *1999 Competition Report* 15 FCC Rcd at 1051-1053 ¶¶5 – 8, ¶70, and Table C-1.

¹³ To get the most accurate picture of ownership, we ask cable operators to supply, at a minimum, the month and year of transaction; name of buyer; name of seller; name and location of systems; price; homes passed, and number of subscribers served.

¹⁴ *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, MM Docket No. 92-264, Third Report and Order, 14 FCC Rcd 19098 (1999) ("Third Report and Order").

- Type of transaction (i.e., sale, swap, or trade)
- Name of buyer
- Name of seller
- Name and location of system
- Price
- Number of subscribers

15. For the past several years, cable operators have engaged in a strategy of buying and/or swapping cable systems with the objective of creating regional clusters of contiguous, commonly owned and operated cable systems. We request comment on the practice of clustering. As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise that affect competition? What conflicts, if any, result from new ownership of franchises based on political subdivisions controlling operations based on technical integration?

16. Clustering is purported to create greater economies of scale and scope and enable cable operators to offer a wider variety of services, including telephony and Internet service, at lower prices to consumers.¹⁵ In the Commission's *1999 Price Report*, however, we found that operators that were part of a cluster had, on average, higher prices than operators that were not part of a cluster had.¹⁶ In addition, the *1999 Price Report* found that of those operators that were part of a cluster, less than 2% offer cable telephony, 46% offered two-way interactive service, and about 25% offered Internet access service to their subscribers.¹⁷ By comparison, among all systems (clustered and non-clustered), 4% offered telephony, 45% offering two-way interactive service and 27% offered Internet access service to their subscribers.¹⁸ We seek comment on these findings and request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

17. We also are interested in learning whether noncable video programming distributors cluster their systems. If so, we seek to identify the companies that have decided to cluster their systems, the delivery technology used, the number of homes passed in each service area or cluster, and the number of subscribers. We also request information regarding the effect clustering in such cases has had on the services offered to consumers and the effect on the prices charged for such services?

18. We further seek comment on how cable operators package programming for consumers. Are cable operators restructuring their programming tiers now that cable programming service tier

¹⁵ See *1999 Competition Report*, 15 FCC Rcd at 1051-1053 ¶¶161-165.

¹⁶ The regression equation used estimated the average monthly rate as a function of household income, system size, competitive status, and association with an MSO cluster in order to determine the effects of clustering on rates. See *1999 Price Report*, Attachment D-1 for results of this analysis.

¹⁷ *1999 Price Report* at ¶38.

¹⁸ *1999 Price Report* at ¶36.

("CPST") rate regulation has ended?¹⁹ If so, to what extent are operators shifting programming from the basic service tier ("BST") to the CPST and creating smaller basic tiers (i.e., "lifeline" tiers)? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

2. Direct-to-Home Satellite Services

19. We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services.²⁰ Previous reports have noted the continued growth of DBS subscribership and the increased proportion of video programming subscribers choosing alternatives to cable television.²¹ We also observed a decline in the number of HSD subscribers. Are these trends continuing? Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How do DBS rates for a package of programming and equipment compare to equivalent packages offered by cable?

20. On November 29, 1999, the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") became law.²² One of the key elements of the SHVIA is that it permits satellite carriers to offer their subscribers local TV broadcast signals in their local markets, through an option referred to as "local-into-local." The law also authorizes satellite carriers to provide distant or national broadcast programming to subscribers. SHVIA generally seeks to place satellite carriers on an equal footing with local cable television operators when it comes to the availability of broadcast programming, and thus gives consumers more and better choices in selecting a video distributor such as cable or satellite service. We seek data and information on the number of markets where local-into-local service is offered, or will be offered in the near future, including the number and affiliation of the stations carried. What percent of DBS subscribers are opting for local programming packages where available? We also request information on the impact of SHVIA on DBS subscribership and penetration as well as its effect on the video programming market generally.

21. As part of its *1999 Price Report*, the Commission surveyed cable operators about the level of DBS subscribership in their franchise areas. According to the survey results, DBS is more likely

¹⁹ See 47 U.S.C. §543(c)(4), as amended by the Telecommunications Act of 1996, Pub.L. No. 104-104 § 301(a)(1), 110 Stat. 115 (1996).

²⁰ DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 foot) to receive programming. DBS uses relatively small receiving dishes. For our reports, we include high power satellite services that use 18-24 inch dishes and medium power satellite services that use 36-40 inch dishes in our definition of DBS. See, e.g., *1995 Competition Report*, 11 FCC Rcd at 2080-2084 ¶¶ 48-52; *1998 Competition Report*, 13 FCC Rcd at 24323 ¶ 61.

²¹ *1998 Competition Report*, 13 FCC Rcd at 24287-24288 ¶7.

²² SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), Pub.L.No. 106-113, 113 Stat. 1501, Appendix I (1999).

to acquire new subscribers in rural areas than in urban areas.²³ We seek comment on these findings and we request data on the geographic locations of DBS and HSD subscribers. To what extent do DBS subscribers reside in areas not passed by cable systems? What proportion of DBS subscribers also subscribe to cable services?

22. Recently, rate increases have been announced for DBS programming packages. How do DBS monthly rates compare to those of cable? We seek data on the number of channels and prices of various DBS programming packages in order to compare per channel rates between cable and DBS service?

3. Broadcast Television

23. In this *Notice*, we seek information on the role of broadcast television in market for distributing video programming. We request information regarding the extent to which broadcast television competes as a distribution medium with multichannel video programmers for audiences or for advertising revenue.

24. Broadcasters are in the process of rolling out digital television ("DTV"). Currently, there are close to one hundred television stations broadcasting over-the-air in digital format.²⁴ While the Commission undertakes a review of the digital television rollout every two years, its focus is on the technical buildout of systems rather than the role of DTV in markets for the delivery of video programming that is our focus.²⁵

25. We request information regarding the amount and type of programming (e.g., network, local, syndicated) being broadcast on digital channels, including the extent to which DTV channels are being used for high definition television ("HDTV") and the extent to which they are being used for multichannel program offerings ("multicasting"), including standard definition television ("SDTV"). In addition, we request information on the sales of DTV consumer equipment and factors affecting consumer adoption of DTV equipment.²⁶ Finally, we request fact-based projections and analyses of when the transition to digital television and the end of the analog broadcast service is likely to take place. What will speed that transition? What will deter the transition? How does the transition period affect competition in the market of video programming?

²³ For those operators who provided DBS subscribership information, we found that those serving areas having less than 25% urban population had an average DBS penetration (DBS subscribers as a percent of TV households) of approximately 18%. In areas with more than 75% urban population, the average DBS penetration was approximately 8%. See *1999 Price Report* at ¶47.

²⁴ There are a number of other DTV stations on the air periodically under experimental or special temporary authorities (STAs) with less than fully authorized facilities.

²⁵ See *Advanced Television systems and Their Impact Upon the Existing Television Broadcast service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

²⁶ *Compatibility Between Cable Systems And Consumer Electronics Equipment*, PP Docket No. 00-67, Notice of Proposed Rulemaking, FCC 00-137 (released April 14, 2000).

4. Wireless Cable

26. In the *1999 Competition Report*, we reported an almost 18% decline in MMDS video subscribers.²⁷ The decline in subscribership is a trend that has continued from previous years. However, the industry is in the process of expanding service offerings to include two-way communications services, such as Internet.²⁸ What effect will this have on MMDS subscribership trend and what effect does the decline of MMDS subscribership have on the status of video competition and consumer choice?

We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology.

5. Satellite Master Antenna Systems.

27. Video distribution facilities that use closed transmission paths without using any public right-of-way known as SMATV or private cable systems, primarily serve multiple dwelling units ("MDUs") such as apartment buildings. The *1999 Competition Report* noted growth in SMATV subscribership based on the comments of the National Cable Television Association. As was reported, the increase in SMATV subscribers may be attributable to the inexact method used for estimating SMATV subscribers. In order to provide the most accurate and reliable estimate of SMATV subscribership, we request data for SMATV markets, including subscribership levels, service areas, and the identities of the largest operators. We also request information on the types of services offered by SMATV providers and the price charged for those services. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators?

28. We previously reported that some SMATV operators serve as marketers of DBS programming.²⁹ Have SMATV providers been successful in their alliances with DBS operators? Finally, are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not?

6. Open Video Systems.

29. Congress established open video systems ("OVS") as one means for local exchange carriers ("LECs") to enter the video marketplace. The OVS rules, however, do not preclude non-LECs from becoming OVS operators and there are OVS operators who are not LECs. Are there any discernable differences between LEC and non-LEC operators of OVS systems?

30. We request information on the operation of open video systems, including the number of homes passed, the number of subscribers, and the types of services being offered on OVS. To what extent are open video systems joint ventures between video service providers and other entities (e.g., utility companies, Internet service providers) and what are the arrangements among the participants in

²⁷ *1999 Competition Report*, 15 FCC Rcd at 1020 ¶ 87.

²⁸ *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, MM Docket No. 97-217, Report and Order, 13 FCC Rcd 19112 (1998), recon., 14 FCC Rcd 12764 (1999), further recon. pending. See also *Commission Announces Initial Filing Window for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service*, Public Notice, DA 00-666 (released March 23, 2000).

²⁹ *1999 Competition Report*, 15 FCC Rcd at 1024-1025 ¶ 98.

such ventures? An OVS operator must make channel capacity available for use by unaffiliated programmers. Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis?

31. Under the *City of Dallas, Texas v. FCC* decision, local governments have the ability, although not the obligation, to impose franchise requirements on OVS operators.³⁰ What effect has this decision on the growth of OVS? Have video providers switched from the OVS model to the traditional cable model in light of this decision? We request information and data on the current status of OVS.

7. Local Exchange Carriers and Utilities

32. For the 2000 Competition Report, we request information regarding LECs, long distance telephone companies, and utility companies that provide video services. What delivery technologies are being used? Is the entity providing video services as part of a joint venture? With respect to LECs, we request information about the current status of their activities and any changes that have occurred since the *1999 Competition Report*. We specifically seek updated information on the SBC Ameritech and SNET operations, the U.S. West VDSL entry techniques, and the Bell South MMDS, cable and satellite initiative.

33. In addition, we request updated information on franchised cable systems operated by LECs, both within their telephone services areas and outside those regions. To what extent are these LEC cable systems overbuilds of incumbent cable systems' service areas? In addition, we are interested in whether video programming services are being bundled with telephone, Internet, or other utility services? If so, how does the ability to offer bundled services affect the relative competitive position of these entities?

8. Home Video

34. In 1990, the Commission concluded that home video provides competition to cable television, at least with respect to the premium and pay-per-view programming services.³¹ Subsequently, we have reported on developments in the home video marketplace in our annual reports. We seek comment on whether these technologies should continue to be considered competitors with broadcasting and multichannel video programming distributors given the changes in the marketplace. We also seek information and updated statistics regarding home video sales and rental market. We request data on the number or percentage of households with video cassette recorders ("VCRs"), laser disk players, digital videodisk ("DVD") players, and personal video recorders ("PVRs"), and on the amount of programming available in each format. PVRs, the newest entrant into the home video marketplace. PVRs use a hard drive instead of videotape to record programming and are capable of sophisticated time shifting and operate as a kind of hybrid electronic program guide and videocassette recorder. PVRs may also be used in conjunction with subscription services to allow consumers to create personalized viewing menus.

³⁰*City of Dallas, Texas v. FCC*, Case No. 96-60502, 165 F.3d 341 (5th Cir. January 19, 1999).

³¹*Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, Report, 5 FCC Rcd 4962 (1990) at 5019-20, ¶¶ 109-110.

9. Internet Video

35. We also seek comment and fact-based projections as to when and if Internet video will become a viable competitor in the market for the delivery of video programming. In the *1999 Competition Report*, we reported increases in the number of software products designed to provide video over the Internet as well as an increase in the amount of video content on the web.³² Nevertheless, in April 2000, a Canadian firm, iCrave, settled a lawsuit brought against it by U.S. broadcasters who alleged violations of U.S. copyright law and shut down its streaming video web site.³³ In addition, many broadband overbuilders cite cable operators as prime rivals in their markets and video as their lead service.³⁴ In light of these developments, we request information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet. What technical parameters must be established and what technical, economic, or regulatory barriers exist to prevent Internet or DSL delivered video becoming an effective competitor to the more established distribution systems?

B. Programming Issues

36. In past years, we have relied heavily on publicly available information and data from a variety of sources to compile our profile of video programming practices and ownership. For this year's report, in order to get the most accurate picture of MSO ownership in national video programming services, we ask video distributors to supply us directly with the following information:

- Name of programming service
- Type of programming service (i.e., national, regional, sports, news, etc.)
- Launch date
- Percentage of MSO ownership
- Number of subscribers
- Availability and market penetration of video described programming

37. We seek to update our 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 plan to identify national programming services and assess the extent to which video programming services are affiliated with cable MSOs.

38. We request data on the extent to which there are programming networks affiliated with noncable video programming distributors and whether such programming networks are available to competitors, including cable operators, on reasonable and nondiscriminatory terms. Are noncable video distributors producing their own programming or securing exclusive rights to certain programming

³² *1999 Competition Report*, 15 FCC Rcd at 1031-1032 ¶¶ 112-114.

³³ Samatha Sacks, *Tech Talk, Copyright Plight, Entrepreneur Cries Foul As iCrave Is Banned From Computer Screens*: The Globe and Mail (Toronto Canada), April 1, 2000.

³⁴ *New Broadband Players Rush into Cable and Telecom Markets*, Communications Daily, June 9, 2000, at 1.

services? What are the costs of producing or securing such programming and have noncable video distributors encountered any difficulty in doing so? We also request comment on whether there are certain programming services (i.e., "marquee" program services) or types of services (e.g., movie, sports, or news channels) that a video programming distributor needs to provide to subscribers in order to be successful? If so, which services or classes of services are needed and to what extent are there substitutable services?

39. We request information on recently launched programming and planned programming launches. We seek ownership information for each new and planned programming service. We also ask commenters to provide the actual launch date for new services and the currently scheduled launch date for planned services? To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on its being associated with one of the largest cable system operators? To what extent does the success of a new programming service depend on its being associated with the brand name of an existing channel?

40. In addition, we are interested in how video programming distributors package their programming. To what extent do these distributors offer or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel, or "mini-tier" basis) rather than programming service packages (i.e., tiers of programming services). What are the requirements that permit a video programming distributor to offer a more customized service? Are there economic, legal, or other impediments to offering programming services in this manner?

41. We further solicit information regarding local and/or regional channels including sports channels, news channels, and foreign language/culture channels. We ask commenters to identify such programming services by name and programming type and to provide current figures for the number of subscribers or market share. To what extent do local cable operators or broadcasters own or have some involvement in providing local or regional channels? What technologies are used to distribute these channels? Are additional local and regional services being added due to increased system analog or digital capacity, or are they displacing other existing video services? How has regional clustering among MSOs contributed to the feasibility of regional MSO affiliated programming services? Are local and regional programming services available to unaffiliated video programming distributors?

42. We also 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 use of leased access channels, either on a part time or full time basis. Has the Commission's 1997 Order amending the leased access rules had any impact on the development of leased access?³⁵ Do these channels provide any competition to the programming channels under the control of the cable operator? In November 1998, the Commission adopted rules to implement Section 335 of the Communications Act concerning public interest programming obligations for DBS providers.³⁶ The rules require DBS licensees to reserve 4% of their channel capacity for "noncommercial programming of

³⁵*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, 12 FCC Rcd 5267 (1997).

³⁶*See Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254 (1998).

an educational or informational nature." Commenters are asked to provide information regarding the current or planned use of these channels.

43. As in previous reports, we will continue to report on the effectiveness of our program access,³⁷ program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers.³⁸ We request comment on whether the coverage of the program access rules is appropriate. Are there any cases of video programming distributors being denied programming when a satellite-delivered service becomes terrestrially-delivered, or being denied programming by non-vertically integrated programmers? In addition, to what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with an programming distributor (e.g., cable operator) available to other video programming distributors (e.g., another cable operator or delivery technology)? How do exclusive programming arrangements between incumbent cable operators and unaffiliated programmers affect noncable video programming distributors? How do exclusive programming arrangements between incumbent cable operators and programmers that deliver programming terrestrially affect noncable video programming distributors?

C. Technical Advances

44. Cable operators and other video programming distributors continue to develop and deploy advanced technologies that allow them to deliver additional video programming and options, high speed data access, telephony service and other services to consumers. In this section, we request information on the various aspects of these technical advances and how they affect competition in the markets for video programming.

1. System Upgrades

45. Cable operators have made substantial investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services such as high-speed, switched, broadband telecommunications capability.³⁹ We seek information on whether these investments are continuing at the same pace as in previous years and what role, if any, the ability to provide advanced broadband services plays in attracting and retaining subscribers to cable firms.

46. We have observed that cable operators are upgrading their systems for bandwidth expansion through a number of technical methods, including upgrading existing amplifiers and increasing their bandwidth carrying capacity. We request information on the deployment of the various methods to increase capacity. We also request information regarding MSOs that have created digital tiers. How have cable systems increased their channel capacities by using digital tiers? What types of programming are available on digital tiers? Are these tiers used for new programming, digital clones of existing analog services, or digital hybrids modeled after an existing analog service with increased capabilities? For individual MSOs, we request data on:

- Number of systems upgraded

³⁷ The program access rules also apply to OVS operators and common carriers in the same manner as they apply to cable operators. 47 C.F.R. §§ 76.1004, 76.1507.

³⁸ *1998 Competition Report*, 13 FCC Rcd at 24389-24390 ¶¶ 191-194.

³⁹ See 47 U.S.C. § 706(b) 157 nt. See also *Broadband Inquiry*, 14 FCC Rcd 2398 (1999).

- Analog channel capacity resulting from upgrades
- Digital channel capacity resulting from upgrades
- Number of systems with digital tiers
- Number of households where digital services are available
- Number of subscribers to digital services
- SAP channel capacity resulting from upgrades

47. We also seek information on how upgrades are being implemented. 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? Are small and medium size MSOs upgrading deploying digital technology? How?

2. Convergence

48. In the *1999 Competition Report*, we observed that the most significant convergence of service offerings has been the pairing of Internet service with video services.⁴⁰ Essential to this convergence is the widespread deployment of modems by cable operators. Cable firms have begun finalizing the technical standards (Data Over Cable Service Interface Specification or "DOCSIS") intended to provide manufacturers with a set of standards that will enable the production of interoperable cable modems.⁴¹ We seek comment on the current and future effect of video programming distributors providing Internet and other data services to their subscribers.

49. To the extent that video programming distributors are offering video and nonvideo services together (i.e., bundled services), how are the combined services offered and priced? Does the ability to offer bundled services affect the relative competitive position of a video programming distributor? If so, how? For each entity providing services bundled with a video service, we seek a description of the nonvideo services provided, information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities, and the number of homes passed by, and subscribers to each service as of June 30, 2000.

50. Finally, we seek comment on what criteria and circumstances cable and other video programming distributors take into account when deploying and packaging new technologies and nonvideo services such as telephony and Internet service. What interplay exists between digital services -- video, voice and data -- and what factors govern the rollout and marketing of these technologies to subscribers.

3. Consumer Equipment

51. As digital services and other new technologies are deployed by video programming distributors, changes in consumer premises equipment design, function, and availability may affect

⁴⁰ *1999 Competition Report*, 15 FCC Rcd at 982 ¶ 11.

⁴¹ *1998 Competition Report*, 13 FCC Rcd at 24393-24394 ¶¶ 204-206.

consumer choice and competition between firms in the video programming market.⁴²

52. Along with cable modems, cable operators are also deploying set-top boxes, integrated receiver/decoders, and navigation devices or receivers that facilitate or differentiate video distributors' service offerings. Thus, we seek comment on the compatibility and availability of customer premises equipment used to provide video programming services. Specifically, we ask commenters to provide information regarding the development of specifications for interoperable set-top boxes, including updated information on the progress of Cable Television Laboratories, Inc.'s OpenCable process.⁴³ We also seek information on the retail availability of navigation devices to consumers.⁴⁴ What types of devices are available at retail and what are their capabilities? Is existing equipment compatible with the OpenCable? Finally, to what extent are consumers now purchasing equipment, including DOCSIS compliant cable modems rather than renting from video programming distributors?

4. Electronic Programming Guides

53. An electronic programming guide ("EPG") is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings.⁴⁵ For this year's report, we request updated information on the extent to which video programming distributors offer or plan to offer EPGs to their subscribers. We ask commenters to provide data on the number and different types of available electronic programming guides. We are interested in whether each EPG is nationally or locally produced and whether nationally distributed EPGs can be customized for local program offerings. We seek information regarding the ownership of nationally distributed EPGs, particularly with respect to their affiliation with video programming distributors. To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider but are still able function properly with the video programming service and/or the OpenCable standard? To what extent are EPGs that are affiliated with a video programming distributor available to competitors? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both?

⁴² On April 14, 2000, the Commission released a Notice of Proposed Rulemaking to resolve outstanding issues regarding the compatibility of cable television systems, digital television receivers, set-top boxes, and other equipment used by consumers to receive and enjoy programming and other services available over cable television systems. See *Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, PP Docket 00-67 (released April 14, 2000).

⁴³ The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. ("CableLabs"), a research and development consortium of cable operators. The standard is made up of technical specifications that will facilitate interoperability among digital navigation devices manufactured by multiple vendors. According to CableLabs, it has opened its specifications to several vendors rather than designating a single proprietary solution, with the goal of introducing digital cable ready television sets and other navigation devices into retail distribution. See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 (1998) ("Navigation Devices Order").

⁴⁴ Under the Commission's navigation rules, video programming distributors are required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. See *Navigation Devices Order*, 13 FCC Rcd 14775.

⁴⁵ *1998 Competition Report*, 13 FCC Rcd at 24385-24386 ¶¶ 181-184.

D. Case Studies

54. In recent *Competition Reports*, we presented several case studies of local markets where cable operators faced actual competition from new entrants.⁴⁶ This year, we request information on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. In particular, we seek updated information on video programming services in those areas included in our previous case studies to determine whether the initial effects of competition continue. We also seek data regarding other areas where head-to-head competition exists, or is expected to exist in the near future, between cable and other video programming distributors, or among various types of video programming distributors. How has such competition affected prices, service offerings, quality of service, and other relevant factors? What regulatory changes have facilitated head-to-head competition in local markets between or among video programming distributors? What barriers still exist which inhibit further competition?

55. For each area where consumer choice exists, please supply the following information:

- Identity of the competitors
- Distribution technology used by each competitor
- Date that each competitor entered the market
- Location of the market, including whether it is predominantly urban or rural
- Estimates of subscribership and market share for the services of each competitor
- Description of the service offerings of each competitor
- Differentiation strategies each competitor is pursuing
- Price charged for the service offerings

E. Multiple Dwelling Units

56. In previous *Competition Reports*, we considered multiple dwelling units ("MDUs") a separate submarket.⁴⁷ For the 2000 Competition Report, we seek to update our information on video delivery competition for and within MDUs. Specifically, we seek comment on what factors influence MDU competition? Are these factors unique to the MDU market? How common is it for consumers to have choices among video programming services within a particular MDU? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are these video distributors providing nonvideo services to MDU customers? Is the use of exclusive and so-called "perpetual video service contracts in MDUs

⁴⁶1999 *Competition Report*, 15 FCC Rcd at 1070-1077 ¶¶215-248; 1998 *Competition Report*, 13 FCC Rcd at 24395-24404 ¶¶ 208-231; 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 for "effective competition" were met. See Section 623 (k)(1), Communications Act, 47 U.S.C. § 543 (k)(1).

⁴⁷1997 *Competition Report*, 13 FCC Rcd at 1109-1114 ¶¶ 129-139; 1998 *Competition Report*, 13 FCC Rcd at 24363-24370 ¶¶ 129-143.

increasing or decreasing? What effect do the inside wiring,⁴⁸ over-the-air reception device ("OTARD"),⁴⁹ and cable bulk rate⁵⁰ rules have on MDU competition?

III. PROCEDURAL MATTERS

57. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, 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 September 8, 2000, and reply comments on or before September 29, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

58. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

59. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Donnajean Ward at (202) 418-7200, TTY (202) 418-7172, or at dward@fcc.gov.

60. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

⁴⁸See *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).

⁴⁹*Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services, CS Docket No. 96-83, Second Report and Order*, 13 FCC Rcd 23874 (1998).

⁵⁰1996 Act § 301(b)(2), 47 U.S.C. § 543(d).