

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

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

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CS Docket No. 00-132

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To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF COMCAST CORPORATION

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Summary

This year there can be no doubt: effective competition in the video distribution marketplace is sustained, is thriving, and has conclusively eliminated any market power that cable operators may once have possessed. This elimination of market power is reflected in part by the continuing decline in cable's share of multichannel video customers, and the projected continued acceleration of that decline. More importantly, this effective competition has been a major incentive in the cable industry's drive to upgrade its infrastructure and add new, attractive and diversified digital broadband service offerings, fulfilling cable's early promise as the full-service broadband communications platform of the future.

Comcast's own experience reflects this overall industry trend toward an effectively competitive marketplace. Comcast continues to demonstrate strong results across a wider range of broadband services in this competitive video marketplace. Comcast faces greater and growing competitive challenges in each of its service areas from a variety of multichannel video programming distributors, particularly from the two national direct broadcast satellite providers (one of which is substantially larger than Comcast), and more recently from a bevy of well-funded, terrestrial, integrated broadband service providers. The DBS industry further strengthened its competitive challenge during the past year through its consolidation into two, ubiquitous national players whose already significant market position has increased exponentially. Both of these national DBS competitors offer consumers in all of Comcast's service areas a range of digital video programming services.

Moreover, with the amendment of the Satellite Home Viewer Act to permit DBS retransmission of local broadcast signals, there is no question that DBS is a fully substitutable service providing effective competition to cable operators nationwide. In addition to these

primary competitors, Comcast faces a variety of satellite master antenna television, multipoint multichannel distribution service, integrated broadband service, and open video system competitors to its core video service. Each of these competitors challenge Comcast in service offerings and price.

The cascade of old and new competitive forces has caused Comcast to (1) continue its substantial investments in cable system upgrades to increase channel capacity rapidly and to maintain parity with its competitors; (2) offer a range of new communications services, particularly digital cable and high-speed cable Internet to provide customers with maximum choice in response to the high-capacity and bundled offerings of its competitors; (3) increase efficiency and reduce operating costs by continuing to rationalize and cluster systems into dense geographic regions; (4) restrain retail prices despite spiraling programming and significant upgrade costs; and (5) distinguish itself from its competitors by strengthening its roots in the local communities it serves. Comcast has responded to the reality of effective competition in the video marketplace by becoming a stronger and more efficient multi-service provider in the markets it serves.

An element of Comcast's response to the rapidly changing communications marketplace has been the formation of regional clusters. Clustering has enabled Comcast to respond to competitive pressures, increased programming costs, and the large capital outlays necessary for system upgrades and new technologies through the reduction of operating expenses and the more efficient use of its network. Clustering is a pro-competitive response to dynamic market conditions and new market entrants, resulting in more abundant video, data and voice service choices for consumers.

Moreover, as competing MVPDs have grown dramatically larger and secured rights to exclusive programming in order to distinguish themselves from one another and from cable, they are more than able to compete in the programming marketplace without a continued unnecessary advantages from the government. Accordingly, the Commission can safely permit at least one part of the program access rules – the prohibition on certain exclusive contracts – to sunset in October, 2002 as Congress hoped would be possible. There is no factual or legal basis for extending the program access regulations beyond their current scope and there is certainly no basis to expand coverage to terrestrially delivered programming, non-vertically integrated programming, or any other content.

With such a strong record of support, we urge the Commission in its next report to Congress to acknowledge that vigorous and effective competition is present in the market for delivery of multichannel video programming. The Commission should also highlight that factors other than price (*e.g.*, greater programming choice and additional services, and improvements in channel capacity, signal quality, and customer service) are powerful indicia that MVPD competition is present and sustained. The record in this proceeding leads inexorably to the conclusion that the Commission should stay the pro-competitive course it has charted and that no additional legislative or regulatory action aimed at constraining cable's freedom to compete is needed or warranted. Indeed, the imposition of additional regulations or laws aimed at disadvantaging cable or providing advantages to its multichannel video competitors would only retard a truly open market for the delivery of video programming and other services.

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Comcast Corporation (“Comcast”), by its attorneys, hereby submits this Reply to Comments filed pursuant to the Commission’s Notice of Inquiry in the above-captioned proceeding (FCC 00-132, released August 1, 2000).

I. INTRODUCTION

Comcast Corporation is principally engaged in the development, management, and operation of broadband cable systems and the provision of programming content. Comcast is a Fortune 500 company, reporting revenues of \$6.2 billion in 1999, with 17,600 employees nationwide and over 11,000 in its cable operations alone. Since its founding in 1963, Comcast has grown from a local cable operator with 1,200 subscribers in Tupelo, Mississippi to become the nation’s third largest cable multiple system operator (“MSO”), expecting to serve 8.2 million customers by the end of the year.

From its beginnings in cable television, Comcast has grown to become a full-service communications company. Comcast’s fundamental response to competition is to roll out new, broadband services faster than its competitors. Julian Brodsky, Comcast’s Vice Chairman, recently stated: “We should be the ones that make home networking, interactive television and

video on demand possible.”¹ As discussed below, competition in Comcast’s core video programming distribution service has played and will continue to play a central role in this transformation. The challenge of competition, and the opportunity to compete, drives Comcast’s program of infrastructure upgrades, clustering of systems in dense geographic regions, and development of innovative video programming and Internet protocol (“IP”) based communications services.

II. DISCUSSION

A. COMPETITION HAS TRANSFORMED COMCAST INTO A FULL-SERVICE COMMUNICATIONS COMPANY.

Competitive Environment. In the twenty-six states where Comcast operates,² it competes against a variety of other multichannel video programming distributors (“MVPDs”), including direct broadcast satellite (“DBS”), direct to home satellite (“DTH”), satellite master antenna television (“SMATV”), multipoint multichannel distribution service (“MMDS”), open video systems (“OVS”), and terrestrial “broadband service providers” or “overbuilders” (“overbuilders”). As NCTA has demonstrated, not only are the two major DBS companies providing vigorous, ubiquitous competition to cable operators on a nationwide basis, but new local broadband overbuilders are also rapidly establishing themselves as competitive providers of packages of video programming, telephony and high speed data services.³

This competition is robust and has accelerated markedly over the last year. To meet competition and retain its place as an industry leader in bringing the broadband future to the

¹ Diane Mermigas, *Comcast Doing Much Better than Stock Price Indicates*, ELECTRONIC MEDIA, July 17, 2000, at 18.

² Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

³ See *Comments of National Cable Television Association* in CS Docket No. 00-132, at 5-22 (filed September 8, 2000) (detailing emerging terrestrial overbuilders) (“*NCTA Comments*”).

American consumer, Comcast is pursuing competitive strategies that will enable it to continue to provide the highest quality service at affordable prices. Investment in plant, clustering of systems, and the development of new digital video programming, cable Internet and related IP services are at the heart of these strategies. Thus, Comcast has grown through additional service relationships to its existing cable customers as well as through adding new video and high speed data customers. Comcast Corporation's President, Brian L. Roberts, recently explained that although the company had lost some market share to other video competitors, at the same time it had added over a million new "revenue generating units" (*i.e.*, new subscribers as well as existing subscribers taking new service offerings such as digital cable and cable Internet service). Roberts concluded: "And I'll be the first to admit that the presence of competition was a huge stimulus to us to make this happen."⁴

System Clustering. The bulk of Comcast's cable systems consists of large, technologically advanced systems that are clustered principally in six urban and suburban areas in the Mid-Atlantic region, Southeast Michigan, West Florida, East Tennessee, Indiana, and New Mexico. Eighty-five percent of Comcast's customers are located in six clusters serving more than 200,000 customers each.

As Comcast explained in its comments last year,⁵ clustering enables the company to use its resources more efficiently to provide higher quality video programming and improved customer service while maintaining reasonable and competitive prices. Through strategic acquisitions over the past several years, Comcast has created the nation's largest contiguous cable system cluster of more than four million customers in the Mid-Atlantic region, and

⁴ Tom Kerver, *Operator of the Year: Comcast Cable*, CABLEVISION, Sept. 11, 2000, at 6A (Appendix A).

Comcast is nearing completion of transactions that would further consolidate these regional groups of subscribers. Comcast's Mid-Atlantic service area ranges from the metropolitan Washington, D.C. area, including Northern Virginia, through Baltimore into Delaware and Philadelphia, and reaches into northern New Jersey, to cover a blend of urban, suburban, and rural communities.

Last year, Comcast described a variety of transactions and strategies aimed at building larger system clusters and creating increased investment, new markets and services, and additional programming choices for subscribers.⁶ Comcast and AT&T also reached an agreement by which Comcast would gain an additional 750,000 customers through system swaps. Under the AT&T agreement, Comcast also received an option to purchase additional cable systems serving approximately 1.25 million customers, including the Washington, D.C. cable system. Comcast currently is completing the transfer of systems from AT&T and Adelphia that will serve communities in Washington, D.C., the City of Baltimore, suburban Philadelphia, large portions of metropolitan Detroit and southeastern Michigan, Indiana, New Mexico, middle Tennessee, and Naples and Fort Myers, Florida.

Upon completion of all pending transactions, Comcast will emerge as the nation's third-largest cable MSO, with 8.2 million owned or managed cable customers. Yet, even after its strategic addition of over 2 million subscribers to its base, Comcast will still serve fewer

⁵ See Reply Comments of Comcast Corporation in CS Docket No. 99-230 at 28-29 ("Comcast 1999 Reply Comments").

⁶ *Id.* at 3-6. These include the acquisition of Prime Communications, LLC's systems, which serve customers in Montgomery County and Gaithersburg, Maryland; Arlington County, Virginia; and portions of the City of Chicago. Comcast also acquired Greater Philadelphia Cablevision, Inc., a subsidiary of Greater Media, Inc., operating a cable system serving approximately 79,000 customers in Comcast's corporate hometown, the City of Philadelphia. Additionally, Comcast completed its acquisition of Jones Intercable, Inc. ("Jones"), and thereby gained approximately one million cable customers in eleven states – Maryland, Virginia, South Carolina, Georgia, Florida, Wisconsin, Missouri, Kansas, New Mexico, Arizona, and California.

multichannel video subscribers than DBS competitor, DirecTV. As Comcast predicted last year, DirecTV has continued to add customers at a record pace and now serves 8.7 million customers, as compared to Comcast's expected 8.2 million.⁷

Infrastructure Upgrades. With DBS providers signing up 70% of their new subscribers in cable areas,⁸ and with broadband providers luring away hundreds of thousands of other cable subscribers, Comcast is responding by investing heavily in its systems. Comcast has completed the rebuild of more than 85% of its cable systems. Currently, 85% of Comcast's customers are served by systems operating at bandwidths of 550 MHz or greater, and 65% are served by systems operating at 750 MHz or greater. Every month, Comcast upgrades plant serving nearly 250,000 more homes, mostly in newly acquired cable properties.

Comcast is actively rebuilding its systems to enable it to provide its customers with the full range of new communications services. These efforts have enabled it to compete effectively with DBS providers and a new generation of overbuilders. Comcast, for example, has succeeded in quickly upgrading its Baltimore metro cable systems, covering Baltimore County, Howard County and Harford County, Maryland, and hopes to repeat that success with Washington's District Cablevision: The *Washington Post* recently reported that:

Cable regulators in Baltimore County, where Comcast serves more than 200,000 subscribers, give the company approving reviews. Comcast has introduced high-speed Internet access and a new digital cable product that offers subscribers 175 channels, according to Arvin Rosen, chairman of the Telecommunications Advisory Panel for Baltimore County. In some cases Comcast has

⁷ See *Comcast 1999 Reply Comments* at fn. 4; *Comments of DirecTV, Inc.* in CS Docket No. 00-132, at 10 (filed September 8, 2000) ("*DirecTV Comments*").

⁸ Alan Breznick, *Cable Operators Aim for Steady Flow of New Digital Services*, COMMUNICATIONS DAILY, Sept. 22, 2000, at 3. The article also notes that the DBS "assault" on cable "promise[s] to intensify this fall when DirecTV and EchoStar begin rolling out their own interactive TV and high-speed data offerings."

even beaten its own deadlines, Rosen said. "It has been a very positive experience," Rosen said. . . .⁹

In light of robust competition from so many competing providers, Comcast is responding by providing cable subscribers more and better choices. Comcast's competitive challenge in metropolitan Washington, D.C. will require extensive investment as well as significant operations and marketing efforts. As *Cablevision* recently explained:

[T]he bottom line is the Washington, D.C. system remains one of the sketchiest urban cable properties in the country. For example, there's still no cable-modem service in D.C., even as Verizon (formerly Bell Atlantic) continues to sign up thousands of DSL customers. Comcast has the unenviable task of trying to win back those early adopters someday. That won't be cheap. Or easy.¹⁰

For Washington's District Cablevision to be successful, Comcast must invest heavily in rebuilding the system, adding new programming options, and offering new services such as high-speed cable Internet service. The direct beneficiaries of these competitively driven enhancements will be the residents of Washington, D.C. As *The Washington Post* observed, "if Comcast can repeat its Baltimore County success in the Washington area, it will be a significant gain for most local cable subscribers."¹¹ Comcast intends to rebuild and upgrade 85% of its newly acquired systems within the next 18 months, with many upgrades completed within a greatly accelerated four or five month period.¹²

Development of New Services. Comcast's investment of nearly \$3.2 billion in fiber-optics and nationwide system rebuilds since 1996 has enabled it to deploy an array of new digital

⁹ Christopher Stern, *Comcast Makes Its Play*, THE WASHINGTON POST, August 28, 2000, at F17 (Appendix B).

¹⁰ Michael Grebb, Brian's D.C. Adventure: Comcast is taking over one of cable's worst-reputed systems, CABLEVISION, September 11, 2000, at 38.

¹¹ Stern, *supra*, note 9 & Appendix B.

¹² See Monica Hogan, *Comcast Execs Vow to Keep the Pedal to the Metal*, MULTICHANNEL NEWS, September 18, 2000, at 16.

services.¹³ As a direct result of this investment, the initial Comcast Digital Cable Service, launched in July, 1998, offers more than 170 channels of programming with DVD-quality picture, CD-quality sound, and an interactive on-screen guide, for \$9.95 per month. The service also offers up to thirty-five premium movie channels (*e.g.*, ten HBO screens compared to the two or three offered on an analog system), thirty-eight channels of Comcast Home Theatre pay-per-view, which provides a virtual multiplex theatre in the home, as well as over forty commercial-free digital music channels, and its interactive on-screen program guide allows customers to search for programs by title, time, channel, or category, and provides both greater service and greater choice to subscribers.¹⁴

This past August, Comcast launched a digital basic tier that gives customers thirty-three additional channels as part of their digital cable service for just \$5 more than the cost of the existing Comcast Digital Service. The new service, "Comcast Digital Plus," offers a total of 250 channels, with forty-five premium channels, and is available in approximately forty Comcast systems. Comcast's Digital Cable offerings have been the strongest new product introduction in the company's history, and in addition to delivering the most advanced cable service available today, are laying the foundation for future offerings, such as interactive television, video-on-demand, time-shifted viewing and other personalized services.¹⁵

Over the past year, Comcast focused its primary efforts on the deployment of digital cable service. Today, Comcast provides its Digital Cable Service to nearly 1 million subscribers,

¹³ This investment has been financed by investors and has been taken solely at Comcast's risk. Although Comcast anticipates a continued high level of consumer response to its new services, there is no guaranteed rate of return for its investments, particularly in today's highly competitive marketplace.

¹⁴ See Press Release, *Comcast Exceeds One Million Digital Set-Top Boxes*, August 8, 2000 (available at <http://www.comcast.com/press_room/press_releases>); Press Release, *Comcast Introduces Robust Digital Product*, August 1, 2000 (available at <http://www.comcast.com/press_room/press_releases>).

and it expects to provide that service to more than 1.25 million customers by year's end. The service is available to more than 90% of Comcast's subscribers. This represents growth of over 600,000 subscribers for Comcast Digital Cable Service in the span of just one year, a sure sign of Comcast's responsiveness to even more intense competition.

Comcast's aggressive roll-out of new digital services in Albuquerque, New Mexico is a good example of this effort. Comcast entered the Albuquerque market in 1998 through its acquisition of Jones Intercable. Almost immediately, Comcast initiated a three year, \$100 million initiative to construct a new 310-mile fiber optic network in and around the city.¹⁶ In fall 1999, it began to promote the arrival of Comcast Digital Cable, a complete 170+ channel package for roughly \$40 per month.¹⁷ Even before the company commercially launched the new digital service, 3,000 of Comcast's 120,000 subscribers placed their service orders.¹⁸ In addition, Comcast offers high-speed Internet service in Albuquerque, and it expects to add additional services as it continues to improve its system and completes various phases of its intensive neighborhood-by- neighborhood rebuilding project.¹⁹ Notably, Comcast's efforts have brought the first ever broadband service to many rural areas around Albuquerque.²⁰ As Comcast completes system transfers and upgrades additional systems around New Mexico, its efforts

¹⁵ See Press Release, Comcast Exceeds One Million Digital Set-Top Boxes, August 8, 2000, *supra*.

¹⁶ See, e.g., Tom McGhee, *New Cable Links Will Lead to Net*, ALBUQUERQUE JOURNAL, Nov. 18, 1999, at B4.

¹⁷ See *Id.*

¹⁸ See Frank Zoretich, *3,000 Sign Up For Comcast Cable's News Digital Service*, ALBUQUERQUE TRIBUNE, Nov. 18, 1999, at A3.

¹⁹ The digital package includes nine video and eight audio Spanish-language channels. See *Id.*

²⁰ See Sue Vorenberg, *AOL-Time Warner Merger Will Help In Comcast's Plans*, ALBUQUERQUE TRIBUNE, Jan. 24, 2000, at Business 2.

promise to provide many thousands of additional residents throughout the state with their first high-speed Internet service.

While it continues the first phase of its digital cable roll-out, Comcast also plans to reinvest its digital cable revenues into the systematic development of other new services. Comcast anticipated that video on demand will be introduced in 2001, and interactive television in 2002.²¹ By deploying new services in a steady progression, Comcast will ensure that each new service is introduced with adequate attention and resources in its critical first years.

In the coming year, Comcast will increase its focus on an accelerated roll-out of its high-speed cable Internet service through Comcast@Home.²² Last year at this time, Comcast@Home served 100,000 customers, up from just 25,000 in 1998. Today, Comcast serves more than 260,000 high-speed cable customers, is adding more than 4,200 new customers each week.²³ It expects to serve over 350,000 by year's end. Comcast's high-speed cable Internet service is now available to more than 4.4 million households in over twenty markets.²⁴

²¹ See Diane Mermigas, *Comcast Doing Much Better than Stock Price Indicates*, ELECTRONIC MEDIA, July 17, 2000, at 18.

²² See, e.g., Mike Farrell, *Comcast Portfolio Generates Net Gains*, MULTICHANNEL NEWS, Mar. 6, 2000, at 52 ("Comcast executives [said] that they plan an all-out push to double cable-modem subscribers in 2000."). Comcast@Home delivers unlimited high-speed broadband Internet services directly to a customer's personal computer using a coaxial cable connection and cable modem. Comcast@Home also provides local content, e-mail, personal web space, chat rooms, and twenty-four hour, toll-free customer support seven days per week.

²³ Comcast also is an acknowledged leader in the provision of free high-speed cable Internet services to schools and libraries. Comcast now provides free high-speed cable Internet service to 800 public and private K-12 schools and to 75 public libraries. See Section II.C.2, *infra*

²⁴ These markets are Albuquerque, NM; Harrisburg and metropolitan Philadelphia, PA; North and Northwest New Jersey; Dover, Delaware; metropolitan Baltimore, MD including Baltimore, Howard and Harford counties and Chesapeake Bay areas; Montgomery County and Prince Georges County, MD; Arlington, Alexandria and Prince William County, VA; Chamblee, Augusta, and Savannah, GA; Huntsville, Tuscaloosa and, Mobile, AL; Panama City and Sarasota, FL; Flint, MI; Detroit and Southeast, MI; Indianapolis, IN; Independence, MO; Sacramento, CA; and Orange County, CA. Comcast is also scheduled to launch @Home service in October 2000 in several markets, including Little Rock, AR and Knoxville and Chattanooga, TN.

Comcast's deployment of broadband services also includes the provision of wired local exchange service and a continued leadership role in developing IP telephony. Within the next two years, Comcast plans a comprehensive entry into telephone markets.²⁵ Currently, Comcast provides local telephony service primarily through telephony operations it has gained via system acquisitions. Comcast serves 12,000 circuit-switched telephony customers located principally in Prince George's County, Maryland and Alexandria, Virginia.²⁶ Comcast's other local telephone operations include service to multiple dwelling units in Ft. Lauderdale, Florida and Baltimore, Maryland with custom and CLASS features, as well as regional toll usage services such as intraLATA toll and affiliated long distance services.²⁷ Comcast also provides interexchange telecommunications services to business and residential customers in more than a dozen states through Comcast Telecommunications, Inc. d/b/a Comcast Long Distance. Comcast continues to add telephony customers to its base telephony service.²⁸

Comcast is also a leader in the development of IP telephony, a subset of PacketCable.[®] Comcast continues to believe that PacketCable[®] will ultimately emerge as the leading

²⁵ See Monica Hogan, *DirecTV's Donald Ready for Interaction*, MULTICHANNEL NEWS, Sept. 18, 2000, at 1.

²⁶ Comcast's Jones Intercable, Inc. provides local telephony service that includes a range of custom and CLASS calling features such as call waiting and caller ID, with no usage-based features such as measured toll or long distance service.

²⁷ These operations were begun in 1998, and employ traditional circuit-switched architecture, rather than hybrid fiber-coaxial technology, using a combination of Lucent and Nortel switching platforms

²⁸ In May 1999, Comcast announced its agreement with AT&T to collaborate in bringing competitive local exchange service through AT&T-branded telephony to Comcast markets. The agreement between Comcast and AT&T provides that the venture will begin as soon as AT&T has concluded separate telephony agreements with at least two other non-AT&T affiliated multiple system operators. Press Release, *AT&T and Comcast Agree to Swap Cable Systems, Comcast to Add 2 Million New Subscribers, Two Companies to Collaborate in Offering Cable Telephony*, May 4, 1999 (available at <http://www.comcast.com/press_room/press_releases>). See also, *Ma Bell's Plan is to Serve Up TV, Phone via Cable*, THE WALL STREET JOURNAL, May 6, 1999, at B1. Comcast is continuing to pursue this collaborative approach to local telephony, but notes that delays in AT&T's negotiation of the lead separate telephony agreements with the other MSOs have, in turn, delayed negotiation of its agreement with Comcast.

multimedia technology delivery mechanism. As Comcast Vice Chairman Julian Brodsky has stated: “We believe in IP for the longer haul.”²⁹ The company is currently conducting an IP telephony trial in New Jersey, and commercial deployment will depend upon resolution of a number of complex business issues, including billing and customer service.³⁰ IP telephony will provide an additional mechanism for increased customer choice and will become yet another important competitive factor in the near future.

In addition to new lines of business such as high-speed cable Internet services and telephony, Comcast is in various stages of deploying other new services for its customers such as video-on-demand, interactive program guides, advanced home shopping, and digital video recording features. Comcast Cable Communications President Steve Burke recently stated, “Our goal is to launch one or 2 major products every year for the next 5 to 10 years and turn our company into a new products company.”³¹

Comcast also provides cable video programming through its majority ownership of QVC, Inc., its controlling interest in E! Entertainment Television, Inc., and through other programming investments, including The Golf Channel, Speedvision Network, Outdoor Life Network, Music Choice, and Lightspan Partnership, Inc., a programming service bringing schools and homes interactive television curriculum programming. Through its Comcast SportsNet and CN8

²⁹ Most MSOs Still Waiting to Enter Residential Phone Market, *COMMUNICATIONS DAILY*, September 20, 2000, at 3.

³⁰ See Monica Hogan, *DirecTV's Donald Ready for Interaction*, *MULTICHANNEL NEWS*, Sept. 18, 2000, at 1.

³¹ Alan Breznick, *Cable Operators Aim for Steady Flow of New Digital Services*, *COMMUNICATIONS DAILY*, Sept. 22, 2000, at 3.

operations, Comcast has become an innovator in regional and local news, sports, and public affairs programming.³²

Restraining Retail Price Increases. In response to continued competitive pressures, Comcast continues to restrain price adjustments on its core cable programming services, despite double-digit increases in programming costs and a more than \$3.2 billion investment in system upgrades. As discussed last year, Comcast's cable service offerings provide a low-priced basic tier and offer its subscribers three or more additional levels of programming services, including digital cable and high-speed cable Internet service.³³ Comcast's customers thus continue to enjoy greater choice in video programming and other services at competitive prices, while competitive pressures have spurred Comcast to transform itself in a few years from a one-way video distributor into an interactive, digital broadband company offering consumers their choice of a broad array of video programming, high-speed Internet, telephony, and related services.

B. COMPETITION IN THE VIDEO MARKETPLACE IS ROBUST AND ACCELERATING AT AN EVEN GREATER RATE THAN LAST YEAR.

In its 1999 Annual Report, the Commission observed that, on the whole, "competitive alternatives and consumer choices continue to develop."³⁴ The multichannel marketplace is even more competitive this year, as acknowledged by several key industry analysts.³⁵

³² Comcast's locally originated news and sports programming is discussed in greater detail in Section II.B., *infra*.

³³ See Comcast 1999 Reply Comments at 22-23.

³⁴ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 99 FCC Rcd 418, at ¶ 5 (1999) ("Sixth Annual Report").

³⁵ See, e.g., Bear Stearns & Co., Inc., Raymond Lee Katz and Adria B. Markus, *Byte Fight! Competition and Response in Residential Video and Broadband*, at 52 (rel. Apr. 2000) (discussing "most serious challenge" to cable video services coming from DBS and hybrid fiber-coaxial ("HFC") overbuilders – DBS identified as cable's strongest competitor in the near term, whereas HFC overbuilders may present "greatest long-term challenge"); Andy Pasztor, John Lippman and Gregory L. White, *The Dish is that DirecTV's Owner May Fetch Plenty*, *The Wall Street Journal*, Sept. 26, 2000, at B4 (describing enhanced DBS competition as potentially eclipsing cable in the market for MVPD customers, according to analyst Robert Kaimowitz of ING Barings).

1. Comcast and Other Cable Operators Face Two Powerful DBS Providers, Which Compete Against Them in Every Market Nationwide.

Today, Comcast faces intense competitive challenges from a variety of MVPDs in each of its service areas. The consolidation of the DBS industry into two national, ubiquitous players has occurred even while the DBS providers achieved breathtaking growth and launched new services.

Prior to Comcast's initiation of system upgrades, the majority of its cable systems offered consumers an average of between fifty-five and sixty analog television channels, a substantial portion of which were reserved for "must-carry" broadcast stations, leased access programmers, and public, educational, and governmental ("PEG") channels pursuant to federal regulation and the requirements of local franchise agreements. In contrast, Comcast's DBS competitors, using digital technologies that were not available when Comcast initially constructed its cable systems, were able to provide significantly larger channel capacities. Moreover, these national DBS providers, unencumbered by local franchise agreements and their attendant obligations and costs, such as franchise fees, leased access, PEG, and other obligations, have been able to offer a wider variety of the programming most sought after by consumers at highly competitive prices.

DirecTV currently offers more than 225 digitally delivered channels,³⁶ while EchoStar advertises that its system is "capable of offering over 500 channels of digital video and CD-quality audio programming."³⁷ These channel capacities currently exceed those of even the most advanced analog cable systems and, because they are delivered digitally, can provide customers with enhanced picture and sound quality.

³⁶ See DirecTV Comments at 1.

³⁷ See, e.g., Press Release, *DISH Network Now Offers Cincinnati Metro Area Local Channels Via Satellite Television*, EchoStar Satellite Corporation, Sept. 5, 2000 (available at <<http://www.echostar.com>>).

Furthermore, DirecTV and EchoStar are aggressively deploying new interactive devices. This fall, DirecTV will launch America Online's AOL-TV and Microsoft's Ultimate TV, both of which provide e-mail, shopping and programming information; interactive television content through its partnership with Wink; and a satellite receiver with an integrated TiVo personal video recorder.³⁸ Meanwhile, EchoStar already offers a set-top receiver with Microsoft's WebTV³⁹ and later this year will deploy OpenTV's digital interactive software in at least one million EchoStar set-top boxes, while also initiating StarBand two-way, high-speed Internet service through its partnership with Microsoft and Gilat Satellite Networks Ltd.⁴⁰ All of these services promise to accelerate even further the competitive pressures on cable operators like Comcast. StarBand service, for example, will provide EchoStar subscribers with high-speed, "always on" access to the Internet without requiring the use of a telephone line.⁴¹ EchoStar projects one million StarBand subscribers by 2003 and five million by 2005.⁴² According to the Yankee Group, DirecTV and EchoStar together may provide as many as 250,000 subscribers with high-speed Internet access by the end of this year, and that figure may climb quickly to two million subscribers by 2002 and double again just two years thereafter.⁴³

³⁸ See, e.g., Monica Hogan, *DirecTV's Donald Ready for Interaction*, MULTICHANNEL NEWS, Sept. 18, 2000, at 1 (DirecTV expects its interactive offerings to lead to its "hottest fourth-quarter selling season ever"); David Lieberman, *DirecTV Stays Step Ahead of Cable*, USA TODAY, August 14, 2000, at B2; *Sony Expands Personalization of TV Experience With DirecTV Receiver With TiVo Service*, BUSINESS WIRE, Wednesday, July 19, 2000 (available at <<http://www.businesswire.com>>).

³⁹ See Saul Hansell, *What's the Right Gizmo for TV Interactivity? It All Depends*, NEW YORK TIMES, Sept. 20, 2000, at 40.

⁴⁰ See *OpenTV Shares Climb 5 Pct on Motorola Pact*, REUTERS, Sept. 18, 2000; *Gilat-To-Home Changes its Name to StarBand Communications*, SATELLITE TODAY, Sept. 12, 2000.

⁴¹ Paul Dellinger, *StarBand Service to Debut in November: Echostar Aids High-Speed Internet Link Effort*, THE ROANOKE TIMES & WORLD NEWS, Sept. 19, 2000, at NR V 1.

⁴² *Id.*

⁴³ See *Skyforum: Smug in the Enemy Camp*, CABLEFAX DAILY, Sept. 22, 2000, at 1.

Perhaps the most potent competitive challenge to the cable industry is the ability of satellite providers to retransmit local broadcast signals into local markets, which was authorized by Congress late last year in the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”).⁴⁴ Once freed from the restrictions on providing local broadcast network television signals, DirecTV and EchoStar quickly launched local-into-local service in top markets to win urban and suburban consumers from cable companies.⁴⁵ Already, DirecTV is on the verge of providing local-into-local service in 37 television markets, covering nearly 60 million households and approximately 60 percent of all households nationwide.⁴⁶ EchoStar already retransmits local broadcast signals in 32 markets nationwide.⁴⁷ Thus, in stark contrast to just one year ago, roughly one-half of American consumers can now obtain a comparable and substitutable package of broadcast and cable programming from any of three competitive MVPDs -- their traditional cable operator, DirecTV and EchoStar. In addition, BellSouth Communications will launch its own medium-powered direct-to-home (“DTH”) satellite broadcasting service in Spring 2001 to provide similar services to a potential 50 million households in the southeast.⁴⁸

The national DBS providers also compete vigorously in terms of pricing for video programming and related services, including competitively priced basic services. Recent advertising campaigns for EchoStar in major national daily newspapers such as *The New York*

⁴⁴ See Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999).

⁴⁵ Indeed, EchoStar’s press releases announcing its entry into local-into-local markets proclaim: EchoStar’s DISH Network Brings Competition to Cable – Along with Hundreds of Channel Choices – By Offering Local Networks. See, e.g., Press Release, *DISH Network Now Offers Cincinnati Metro Area Local Channels Via Satellite Television*, EchoStar Satellite Corporation, Sept. 5, 2000 (available at <<http://www.echostar.com>>).

⁴⁶ See DirecTV Adds Local Channels in Markets, SATELLITE NEWS, Aug. 21, 2000.

⁴⁷ See Press Release, *DISH Network Now Offers Cincinnati Metro Area Local Channels Via Satellite Television*, EchoStar Satellite Corporation, Sept. 5, 2000 (available at <www.echostar.com>).

Times and the *Washington Post* make this point boldly by including a large picture of a roaring lion below the headline, "TAKE A BITE OUT OF YOUR CABLE BILL!"⁴⁹ DirecTV offers a competitive forty-five channel basic service package for only \$21.99 per month and a 100-channel package for just \$31.99 per month.⁵⁰ EchoStar offers a forty channel basic service package for \$19.99 per month and a "Digital Dynamite" package of 100 channels for \$34.99 per month.⁵¹ Both companies currently are running promotions that include three free months of programming, and EchoStar additionally offers a "free installation" package.⁵²

Not surprisingly, the programming, services, and competitive prices offered by DirecTV and EchoStar have led to exponential growth in DBS subscribers. Last year, Comcast noted that satellite providers served approximately twelve percent of total television households nationwide, and thus appeared to be able "soon" to exceed the statutory fifteen percent effective competition threshold.⁵³ This year, SBCA has reported that satellite providers already have obtained a market share of 14.5 percent through June 30, 2000.⁵⁴ It seems almost certain that

⁴⁸ See Comments of BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. in Docket No. 00-132, at 2 (filed September 8, 2000) ("BellSouth Comments").

⁴⁹ See, e.g., THE WASHINGTON POST, Sept. 1, 5, and 7, 2000, at A24, A17, and A15, respectively.

⁵⁰ DirecTV Website, *Programming* (visited Sept. 28, 2000) <<http://www.directv.com/programming/programmingpages/0,1093,135,00.html>>.

⁵¹ Echostar Website, *Programming, Basic Packages* (visited Sept. 28, 2000) <<http://www.dishnetwork.com>>.

⁵² See *Id.* Two huge ILECS, Verizon and SBC Communications, which both operate in Comcast service areas, as well as Cincinnati Bell now offer their customers DirecTV packages. See David Lieberman, *DirecTV stays step ahead of cable*, USA TODAY, August 14, 2000, at B2. In addition, DirecTV has partnered with Blockbuster to promote and sell the DirecTV system at Blockbuster's 3,800 stores nationwide. See Press Release, *Blockbuster Kicks Off DIRECTV System Sales in Blockbuster Stores Nationwide; Exclusive Offer Includes One Year of Free Rentals, Two Year Extended Service Warranty*, Blockbuster, Inc., Sept. 7, 2000.

⁵³ See *Comcast 1999 Reply Comments* at 7 & n.12 (citing 47 U.S.C. § 543(l)).

⁵⁴ See Comments of the Satellite Broadcasting and Communications Association, in CS Docket No. 00-132, at 6 (filed September 8, 2000) ("SBCA Comments").

those operators will attain the fifteen-percent threshold before the end of this year. Moreover, DBS providers are now experiencing a subscriber growth rate of 70% in cable areas – a marked increase over the 60% rate they had achieved during the prior two years.⁵⁵

As of June 2000, 15 million households subscribed to satellite MVPDs; the DBS segment of the DTH industry added 8,274 *new subscribers daily* between June 1999 and June 2000.⁵⁶ This represents an annualized growth rate for DTH satellite services of over 25 percent – in other words, approximately twenty-five times the annualized growth rate of the cable industry.⁵⁷

Even the mainstream media has taken notice. Just a few weeks ago, *USA Today* reported that changing marketplace dynamics have propelled Eddy Hartenstein, Global Chairman, Hughes Electronics Corp., parent corporation of DirecTV, into “the go-to guy for a series of recent deals with [media and entertainment] power players.”⁵⁸ *USA Today* observed:

But a lot has changed over the past year. The number of satellite players has shrunk from four to two: DirecTV and Echostar. They're doing surprisingly well in rounding up new subscribers and revenue since the federal government gave them the right to retransmit local stations, which they do for an extra fee.

⁵⁵ See *Skyforum: Smug in the Enemy Camp*, CABLEFAX DAILY, Sept. 22, 2000, at 1. At that time, DBS was expected to garner 16.5 million subscribers by 2003. See *Comcast 1999 Reply Comments* at 8 & n. 18 (citing COMMUNICATIONS DAILY, August 3, 1999 at 10). This year, SBCA reports that the two DBS operators are poised to attain a 16 million subscriber level *by the end of this year*. *SBCA Comments* at 8. An industry analyst has projected that DBS will acquire 25 million subscribers by 2005. *Skyforum: Smug in the Enemy Camp*, CABLEFAX DAILY, Sept. 22, 2000, at 1. In other words, DBS will attain its three-year subscriber projection nearly two years early.

⁵⁶ *Id.* at 5.

⁵⁷ See generally NCTA Comments at 8-10.

⁵⁸ David Lieberman, *DirecTV Stays Step Ahead of Cable*, USA TODAY, August 14, 2000, at B1.

And over the next few months, satellites will take the lead in offering interactive digital TV services, as well as two-way high-speed Internet connections, coast to coast.

“Cable is just now, six years after we launched, getting to digital transmissions,” says Hartenstein, 49. “We’re already several steps beyond that in enhancing an already good digital platform.”⁵⁹

Without a doubt, effective competition from nationwide, ubiquitous DBS offerings has arrived.

2. Terrestrial Cable Overbuilders Have Increased in Both Numbers and Strength in the Past Year.

Comcast also competes head-to-head with ILECs, electric utility-affiliated overbuilders, alternative broadband service providers, OVS, and MMDS operators. Moreover, the dramatic accomplishments of overbuilders during the past year promise to increase.

Perhaps the biggest story in the MVPD marketplace this year is the entry of a “brand new crop of overbuilders,” including Western Integrated Networks, Everest Communications, Carolina Broadband, Grande Communications and WideOpenWest, who have collectively raised more than \$2.3 billion in startup equity capital.⁶⁰ These operators differ from earlier and less successful overbuilders because they intend to defray the considerable costs of constructing entirely new networks over a full suite of digital service offerings – the “triple play” of voice, video and data. This drastically and favorably changes the economics of system overbuilds, a fact that has not been lost to Wall Street.⁶¹ As a result, Comcast’s systems have attracted competition from both established and recently launched, well-heeled broadband service providers. And, competition is likely to increase given the aggressive business plans outlined by

⁵⁹ *Id.*

⁶⁰ *See Kerver, supra*, n. 4 & Appendix A.

⁶¹ *See Id.*

several of the commenters in this proceeding,⁶² as well as the fact that investors have been particularly eager to finance terrestrial overbuilders.⁶³

Comcast competes throughout its key Mid-Atlantic cluster with RCN Corporation (“RCN”), which provides video, telephony, and high-speed Internet services to residential customers. RCN, with a reported \$6.56 billion in available capital, is by far the largest, most established and formidable of this new breed of overbuilder.⁶⁴ Calling itself “the nation’s first and largest single-source, facilities-based provider of telecommunications services to the residential market,” RCN already boasts 352,000 video programming subscribers.⁶⁵ In the Washington, D.C. metropolitan area, RCN competes under the name Starpower through its joint venture with an unregulated subsidiary of Potomac Electric Power Company, and soon will compete with Comcast in Washington, D.C., the Maryland suburbs of Washington, and Arlington, Virginia.⁶⁶

In addition to RCN, several overbuilders have targeted their entry to areas currently covered by Comcast’s Mid-Atlantic super-cluster. For example, American Broadband recently obtained a cable franchise for Baltimore, Maryland, and is targeting additional East Coast cities

⁶² See e.g., *American Broadband Comments* at 1-2 (noting the ability of broadband companies to begin building a broadband network without the encumbrances and obligations of traditional cable companies and outlining its intent to compete by securing competitive local cable franchises); *RCN Comments* at 3-6 (detailing RCN’s intention to expand its cable overbuild into the Philadelphia Metropolitan area, a key point in Comcast’s Mid-Atlantic super-cluster). See also, *NCTA Comments* at Appendix A (detailing emerging terrestrial overbuilders).

⁶³ See Alan Breznick, *New Broadband Service Providers Scare Cable Industry*, COMMUNICATIONS DAILY, Sept. 13, 2000, at 3 (noting that broadband terrestrial overbuilders have raised over \$10 billion in the last two years).

⁶⁴ See *NCTA Comments* at 17.

⁶⁵ Press Release, RCN Reports Strong Second Quarter Results; Solid Increases in Revenues and Connections, RCN Corporation, July 31, 2000.

⁶⁶ See *Comments of RCN Corp.* in CS Docket 00-132, at i (filed September 8, 2000) (“*RCN Comments*”); Stern, *supra* n. 9 & Appendix B (“Starpower Co-Chairman John D. McCallum said his company plans to compete with Comcast in every area of the Washington Market”).

for its video, voice and data services.⁶⁷ New OVS applicant BroadbandConnect, Inc. just received its OVS certification from the Commission to serve various communities within the Washington, D.C. metropolitan areas of Prince George's County, Maryland, including the Cities of Bowie, College Park and Takoma Park.⁶⁸

Comcast also faces competition in its Indianapolis and Nashville systems from Digital Access. Having already obtained over \$450 million in equity financing, Digital Access is now securing franchises from local municipalities and constructing 870 MHz hybrid fiber-coaxial facilities enabling it to offer video, voice and high-speed data services.⁶⁹ In the Charleston, South Carolina and Panama City, Florida areas, Comcast competes against established overbuilder Knology, which offers a bundled package of digital cable, telephone and Internet services to over 130,000 subscribers.

Local phone incumbents also compete with Comcast in the MVPD market. In Georgia and Florida, Comcast competes with BellSouth.⁷⁰ In its southeastern Michigan cluster, Comcast competes in sixteen communities with SBC Communications (formerly Ameritech New Media), which holds franchises in over 100 cities and towns containing more than 1.5 million households. SBC Communications currently serves approximately 300,000 cable customers in

⁶⁷ See *Comments of American Broadband, Inc.* in CS Docket No. 00-132, at 2 (filed September 8, 2000) ("*American Broadband Comments*").

⁶⁸ See In the Matter of BroadbandConnect, Inc., Certificate to Operate an Open Video System, Memorandum Opinion and Order, DA 00-2165, (rel. Sept. 22, 2000).

⁶⁹ See Kerver, *supra* n.4 & Appendix A. In fact, of the four major Mid-Western markets Digital Access has targeted (Indianapolis, Kansas City, Nashville and Milwaukee) two are currently served by Comcast.

⁷⁰ See *BellSouth Comments* at 2. In 1997, the Commission held that Comcast was subject to effective competition from a BellSouth affiliate in Georgia. See *Comcast Cablevision of the South*, 13 FCC Rcd 1676 (Cab. Serv. Bur. 1997).