

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Annual Assessment of the Status of ) MB Docket No. 03-172  
Competition in the Market for the )  
Delivery of Video Programming )

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Comcast Corporation (“Comcast”) hereby responds to the Commission’s Notice of Inquiry (“*Notice*”) in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

This year, for the tenth time, the Commission will prepare a comprehensive report on the state of video competition.<sup>2</sup> This proceeding provides an ideal opportunity for the Commission to review the enormous progress that has been made over the past decade in creating a competitive multichannel video marketplace that serves consumers extraordinarily well.

Everything that we do at Comcast -- every investment we make, every new technology we test, every new initiative we launch to improve customer service and satisfaction -- is driven by the inescapable competitive realities of the multichannel video marketplace. That marketplace gives American consumers access to an array of video choices that is second to

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<sup>1</sup> *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 03-172, FCC 03-185 (July 30, 2003) (“*Notice*”).

<sup>2</sup> *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 19, 106 Stat. 1460, 1494 (codified at 47 U.S.C. § 548(g)) (the “1992 Act”).

none. It also gives Comcast every impetus to control costs, improve service, stay ahead of the innovation curve, and offer consumers quality products and good value.

Multichannel video programming is delivered today by cable companies, two national direct broadcast satellite (“DBS”) providers (DIRECTV and DISH Network), broadband service providers (“BSPs”) (*e.g.*, RCN, Knology, WideOpenWest, StarPower, Altrio, etc.), satellite master antenna TV (“SMATV”) providers, and wireless cable operators -- each of which offers consumers multiple programming packages and service options. Video programming is also available from over-the-air broadcasters, at movie theaters, on videotapes and DVDs (available for purchase or lease), and -- increasingly -- via streaming or downloadable video on the Internet.

Over the past decade, enormous changes have occurred in competition, consumer expectations, technology, service offerings, and ancillary markets (*e.g.*, consumer electronics). Competition, choice, and diversity abound. Today’s multichannel video marketplace looks nothing like the one that Congress felt compelled to address by the combination of regulation and market-opening initiatives in the 1992 Cable Act. With Congress’s decision in 1996 to emphasize a pro-competitive and deregulatory approach to the communications marketplace, American consumers have seen a veritable explosion of investment, innovation, channel capacity, new programming networks, and new choices.

Day after day, the general and trade press publishes articles about the state of competition in the multichannel video marketplace. Article after article reaffirms the reality that the

competition among cable operators, DIRECTV and DISH Network, and, in many markets, local BSPs, is genuine, aggressive, and beneficial to the public interest.<sup>3</sup>

In these comments, we provide a “then and now” overview of how the video marketplace has evolved over the past decade, and then we delve into specifics about how we have responded to this evolution, especially the significant competition we face from DIRECTV and DISH Network. Finally, we provide detailed evidence of how the competition works in today’s market, driving all multichannel competitors to invest and innovate in order to compete effectively. More specifically, these comments show there is little doubt, contrary to the unsupported allegations of certain critics whose views never reflect present market realities, that the following are true:

- The transition to the competitive video marketplace envisioned by Congress in 1992 has occurred, in large part due to the deregulatory initiatives Congress and the Commission have implemented over the past several years. In contrast to the early 1990s, when cable was the overwhelmingly dominant distributor of multichannel video programming, and C-band was the next largest competitor, today’s multichannel video marketplace offers almost every consumer their choice of at least three (and often four) competitors.
- Comcast has been at the forefront as the video marketplace has evolved, and has itself expanded from serving 2.6 million video customers in 1992 to serving over 21 million video customers, 4.39 million high-speed Internet service customers, and 1.37 million telephone customers today. In response to competition, we have upgraded the vast majority of our cable systems and are offering our customers new services and features. Video-on-demand (“VOD”) and high-definition television (“HDTV”) are being deployed rapidly to meet consumer demand and match or exceed the offerings of our competitors. Nowhere are our efforts more apparent than in the systems we acquired from AT&T Broadband less than a year ago, many of which have been (or are being) substantially upgraded to provide these new services to even more American consumers. In addition, throughout

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<sup>3</sup> For the Commission’s convenience, we have attached representative articles addressing the state of competition in the multichannel video marketplace as Exhibit A.

our markets, we are improving customer service and our retail presence in order to provide our customers with the support they need and expect.

- One need only look at the events of the past year to find indisputable proof that there is effective competition in the video marketplace. Each competitor in the marketplace is utilizing every advantage possible to attract subscribers to its service. For each advantage gained, however, competitors have found effective responses despite differences in technologies. This has resulted in substantial competition among all competitors and along all product lines and services. The competition we face has forced us to strive ever harder to offer our customers -- and potential customers -- the best value for the dollar in terms of quality, choice, and customer service.

What is abundantly clear is that multichannel video programming competition is a marketplace reality. Consumers are now well aware that they have a choice to make when it comes to obtaining video programming. We -- and our competitors -- factor the presence of competition into every decision we make. For its part, the Commission should now conclude that Congress's vision of a competitive marketplace is here and that the transition envisioned by the 1992 Cable Act is substantially complete. The state of multichannel video competition provides compelling reasons for Congress to allow the marketplace to work, and for the Commission to continue its efforts to reduce regulation of cable television services.

## II. THE EVOLUTION OF THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING: A COMPETITION SUCCESS STORY.

The video marketplace today is vastly different than it was ten years ago, and consumers are benefiting in every conceivable way. Competition, new services, and more choices for consumers are the hallmarks of today's marketplace. A "then and now" comparison can leave no doubt on this point.

In 1993, competition among multichannel video programming distributors ("MVPDs") was much more a hope than a reality. Back then, cable operators collectively delivered cable service to 57.4 million (or approximately 60%) of the 96.4 million total television households, served approximately 62% of the 92.9 million households that could receive cable, and realized steady double-digit growth in basic subscribers (an average annual growth rate of 11.03% from 1990-1993).<sup>4</sup> Cable operators typically offered a single service -- analog video programming -- consisting of thirty to fifty-three channels, about half of which were vertically integrated with cable companies.<sup>5</sup> Overall industry expenditures on programming for 1993 were approximately \$4 billion,<sup>6</sup> and new investment in cable system upgrades and in new programming networks

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<sup>4</sup> See *In re Implementation of Section 19 of the Cable Television Consumer Protection & Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, First Report, 9 FCC Rcd. 7442 app. C (table 1) (1994) ("*First Annual Report*").

<sup>5</sup> See *id.* app. C (table 2). Indeed, in 1993, only 13% of cable systems could offer greater than 54 channels, while 64% could offer 30 to 53, and the remaining 23% offered under 30. See *id.* With respect to vertical integration, approximately 53% of the 106 programming services in 1993 were vertically integrated with cable operators. See *id.* ¶ 161 & n.434.

<sup>6</sup> See *id.* app. C (table 6).

was virtually nonexistent, due, in large part, to the crippling effects on investment from two government-mandated price decreases under the 1992 Cable Act.<sup>7</sup>

Then, C-band satellite operators were the next largest providers of multichannel video programming, with four million subscribers (most in rural areas, where cable was not yet available) who had to purchase receiving equipment and satellite dishes that were approximately 7-10 feet in diameter and cost on average \$2500 for a complete system.<sup>8</sup> Other competitors' market shares were considerably lower, with SMATVs serving approximately 1 million subscribers, and wireless cable serving 550,000 subscribers.<sup>9</sup> DBS -- though first authorized by the Commission in 1982<sup>10</sup> -- was still in the planning and construction phase and had yet to offer service to consumers.<sup>11</sup>

But it was precisely at this time that the video marketplace began to change, and the changes have over the intervening years continued to accelerate. In December 1993, DIRECTV launched the first high-power DBS satellite and, in June 1994, began to offer multichannel video

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<sup>7</sup> See *id.* ¶ 26. The cable industry's annual investment in infrastructure from 1990-1993 averaged \$2.47 billion. See *id.* In comparison, as discussed more fully below, for the three years after the 1996 Act was passed, the average annual investment in infrastructure increased to \$6.03 billion, and from 1999-2001, after deregulation of CPST rates, the average annual investment in infrastructure had soared to \$14.64 billion. See National Cable & Telecomm. Ass'n, *Cable & Telecommunications Industry Overview 2003*, at 2 (June 2003) ("NCTA Overview"), available at [http://www.ncta.com/pdf\\_files/Mid'03Overview.pdf](http://www.ncta.com/pdf_files/Mid'03Overview.pdf).

<sup>8</sup> See *First Annual Report* ¶¶ 71-73.

<sup>9</sup> See *id.* ¶¶ 79, 92.

<sup>10</sup> See *In re Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites*, Report & Order, 90 F.C.C.2d 676 (1982).

<sup>11</sup> See *First Annual Report* ¶¶ 62-63.

programming service nationwide. Within three months, DIRECTV had approximately 40,000 subscribers and, despite lack of local broadcast signals and relatively high up-front costs (over \$700), had already reported that demand for its equipment had exceeded supply.<sup>12</sup> EchoStar began broadcasting its DISH Network service to subscribers in March 1996, within four months reached the 100,000 subscriber mark, and by September 1996 was offering its receiving equipment to consumers for \$199.<sup>13</sup>

The public response was favorable, and both DBS companies began a period of robust growth that has continued ever since -- and still shows no sign of abating. As discussed in more detail below in Section IV, the video programming marketplace today is remarkably different. DIRECTV, now the United States' second largest MVPD, and EchoStar (operating as "DISH Network"), now the country's sixth largest MVPD, have captured over 20 million subscribers, offer hundreds of channels (including HDTV and local broadcast channels in markets encompassing more than 70% of U.S. TV households), market their services in thousands of retail outlets, carry highly-popular exclusive programming unavailable to cable operators, and routinely offer free or deeply discounted equipment and free installation. Both offer their services at price points that are competitive with cable's -- they compete with cable companies for all categories of customers except the very few (representing less than 2% of Comcast's revenue) who basically want an "antenna service" (*i.e.*, delivery of local broadcast signals with

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<sup>12</sup> See *id.* ¶¶ 63-66. By the end of 1994, DBS equipment and service were available from approximately 10,000 locations nationwide. See *id.* ¶ 66.

<sup>13</sup> EchoStar Communications Corp., *Company Profile*, at [http://www.dishnetwork.com/content/aboutus/company\\_profile/index.shtml](http://www.dishnetwork.com/content/aboutus/company_profile/index.shtml) (last visited Aug. 20, 2003).

minimal value-added programming).<sup>14</sup> EchoStar's Chairman can now boast, with justification, "[t]here's not any cable operator who's immune to an attack from the DISH Network."<sup>15</sup>

Overall, the "DBS industry grew upwards of 13 percent" last year, while the cable industry experienced "an absence of growth," according to the Satellite Broadcasting and Communications Association ("SBCA").<sup>16</sup>

Competition in the video marketplace also has attracted new BSPs that have built state-of-the-art wireline networks to provide bundles of services that include video programming, high-speed Internet access, and telephony. These BSPs have had significant success in attracting customers in the geographic areas they have chosen to serve, and they now account for over one million MVPD homes. SMATVs and wireless cable operators also continue to compete for

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<sup>14</sup> See generally DIRECTV, Inc., *Packages* (describing DIRECTV's programming packages), at <http://www.directv.com/DTVAPP/packages/Landing.jsp> (last visited Sept. 2, 2003); EchoStar Satellite Corp., *Basic Packages* (describing DISH Network's basic packages), at <http://www.dishnetwork.com/content/programming/packages/index.shtml> (last visited Sept. 2, 2003). Notably, the "antenna service" offered by Comcast is generally price-regulated by local franchising authorities, and DIRECTV and DISH Network have elected not to target this audience.

<sup>15</sup> John M. Higgins, *EchoStar Up, But at a Cost*, *Broadcasting & Cable*, Aug. 18, 2003, at 21 (quoting EchoStar Chairman and CEO Charlie Ergen).

<sup>16</sup> Press Release, Satellite Broad. & Communications Ass'n, *U.S. DBS Satellite Television Subscribers Tops 20 Million Mark* (Aug. 20, 2003) ("*SBCA Press Release*"), available at <http://www.sbca.com/press/082003.htm>. The strong and accelerating growth of DBS is dramatically illustrated by the statistics reported in prior video competition reports. In 1994-1995, cable attracted 3/5 of the combined growth of cable and DBS subscribership; by 1997-1998, it was DBS that was attracting nearly 2/3 of that growth; and in last year's report more than 7/8 of that growth was captured by DBS. See *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd. 24,284, app. C (table C-1) (1998); *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd. 26,901 app. B (table B-1) (2002) ("*Ninth Annual Report*").

video consumers. Moreover, technologies such as digital broadcasting and Internet video are presenting new multichannel video programming options for consumers.

Cable companies, too, have been transformed. Stimulated by the deregulation mandated in the 1996 Act and by competition from DIRECTV, DISH Network, and others (and the potential for video competition from telephone companies), the cable industry has invested over \$75 billion of private risk capital to expand system bandwidth and upgrade systems to two-way capabilities, add digital video programming, and introduce various new services and capabilities.<sup>17</sup> Today's cable company offers multiple tiers of analog and digital video programming (totaling 200 channels or more) as well as per-channel and per-program offerings, digital music channels (typically 45 commercial-free channels on Comcast's systems, representing diverse genres of music), high-speed Internet services, electronic programming guides ("EPGs"), VOD, HDTV, and -- increasingly -- telephone services.<sup>18</sup>

Competition spurs innovation, and the competition from both DIRECTV and DISH Network, each offering 200-plus channels, has impelled cable operators to accelerate upgrades and capacity expansion of their systems. Even focusing solely on analog offerings, the typical cable system today offers 80 analog channels -- more than twice the 36 channels typically provided in 1993. The number of cable subscribers receiving more than fifty channels has doubled since 1993, while the number of cable systems with fewer than thirty channels has

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<sup>17</sup> See generally *NCTA Overview*, *supra* note 7, at 2-11.

<sup>18</sup> We have attached hereto the program guide for the District of Columbia for September 10, 2003 as Exhibit B. This illustrates the literally *thousands* of diverse program offerings that a *single* MVPD makes available in a *single* market on a *single* day.

dropped by almost half since 1993.<sup>19</sup> The striking increase in channel capacity on most cable systems -- and for Comcast in particular -- has stimulated the development and distribution of new and diverse programming.

Today, the multichannel video universe counts over 300 national programming networks and scores of regional programming networks, with dozens more networks on the horizon.<sup>20</sup> And, while the number of cable networks has nearly tripled in the past 10 years -- from 106 programming services in 1993 to 308 as of year-end 2002 -- the percentage of networks vertically integrated with cable operators has decreased from 53% to less than 21% during the same period.<sup>21</sup>

To facilitate consumer access to this abundance of programming, the industry has had to develop innovative tools. New full-featured EPGs allow subscribers to view programming menus by genre (*e.g.*, sports, movies, family, etc.), viewing time, and channel position. These new EPGs also empower parents to control what programming their children can view. These ease-of-use tools have fueled competition among cable operators, DIRECTV, DISH Network, and other competitors, as each tries to be the most consumer-friendly.

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<sup>19</sup> Compare *First Annual Report* app. C (table 2) (reporting that, as of November 1993, 13.13% of cable systems could offer 54-plus channels and 63.96% could offer 30-53 channels), with *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd. 6005, app. B (table B-3) (2001) (reporting that, as of October 2000, 24.2% of cable systems could offer 54+ channels and 86.6% could offer 30 or more channels).

<sup>20</sup> See *Ninth Annual Report* ¶¶ 134, 137.

<sup>21</sup> Compare *First Annual Report* ¶ 161 & n.434, with *Ninth Annual Report* ¶ 134 & n.448 (reporting the number of vertically-integrated networks excluding Liberty Media, which has no interests in cable systems except in Puerto Rico).

Cable programming has grown over the past decade not only in quantity, but also in quality, as evidenced by dramatically increased viewership and critical recognition.<sup>22</sup> Consistent with these improvements in quantity and quality, cable operators find themselves paying much more for programming -- approximately \$11 billion in just the past year.<sup>23</sup> Comcast *alone* paid approximately \$4 billion last year in programming costs.

As noted above, cable programming networks are far less “vertically integrated” with cable operators than when the Commission first reported on the state of video competition ten years ago.<sup>24</sup> Consequently, the notion that cable operators are “paying themselves” for this new programming -- an argument sometimes made by those who allege that cable prices are artificially inflated -- is inaccurate. As the nation’s largest cable system operator, factoring in

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<sup>22</sup> See Simon Applebaum, *Cable Grabs 11 News Emmys*, Multichannel News, Sept. 4, 2003 (cable won 11 Emmys at the 2003 News and Documentary Emmy Awards), available at [http://www.multichannel.com/index.asp?layout=story&doc\\_id=125683&display=breakingNews](http://www.multichannel.com/index.asp?layout=story&doc_id=125683&display=breakingNews); *Summer Lovin’: Oh, Those Cable Summer Nights*, CableFAX Daily, Aug. 27, 2003, at 1 (reporting that “cable’s weekly prime HH delivery averaged 31.9 million (+4.3% over last year), a 54.8 share (+2.6%) and a 29.9 rating from May 26-Aug 24,” while the seven national “broadcast nets ended the 3 months with a collective 37.1 share”); see also *It’s Not Cable’s Summer?*, CableFAX Daily, Aug. 28, 2003, at 2 (reporting that “[d]uring the final week of July cable edged the broadcast nets by 21 share points -- its largest margin ever”); *NCTA Overview*, *supra* note 7, at 12-13, 15-16 (reporting that cable networks received a record number of Emmy nominations in 2002, won 41 Emmys, and have received numerous other programming awards and that, over the past decade, basic cable network viewing shares increased 105% from a 24 share in 1991-1992 to a 53 share in 2001-2002).

<sup>23</sup> *NCTA Overview*, *supra* note 7, at 15.

<sup>24</sup> By contrast, if the pending merger between News Corp. and DIRECTV is approved, a single DBS provider will be vertically integrated with both News Corp.’s programming assets (10 national programming networks and 22 regional programming networks) as well as Liberty’s programming assets (41 national programming networks). See *In re General Motors Corp. and Hughes Elecs. Corp., Transferors, and The News Corp, Transferee*, Consolidated Application for Authority to Transfer Control, MB Docket No. 03-124, attachment F (filed May 2, 2003) (“*DIRECTV/News Corp Application*”).

Comcast's ownership percentage in a handful of networks, we recently calculated that only about 5% of the increases in our programming costs last year were paid to companies affiliated with us; the other 95% of the programming cost increases were paid to unaffiliated programmers.

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In its *First Annual Report*, the Commission recognized that “the 1992 Cable Act’s regulatory scheme serves as a transitional mechanism *until competition develops and consumers have adequate multichannel video programming alternatives.*”<sup>25</sup> Clearly, that time has now arrived. In contrast to 1993, consumers in almost every corner of America have a choice among at least three (and in some cases four or more) facilities-based multichannel video providers. Each competitor is innovating, marketing, and gaining market share, not only among supposed “niche” customers (*e.g.*, those that spend the most or are the most technologically adept), but across all income ranges and regardless of how technologically savvy consumers are.

A review of the past decade shows that the channel capacity of cable systems and their competitors has been vastly increased; programming choices are plentiful; customer service has improved; system reliability has increased (as has picture quality); and new services and features continue to emerge. (As an unanticipated bonus for consumers and the U.S. economy, the cable industry’s extensive system upgrades and improved network reliability have allowed it to take the lead in delivering -- and stimulating others to deliver -- “broadband” services, for which consumer demand is now growing faster than it did even for cell phones and personal computers.) On a single day, in any given home, each member of a household served by a state-

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<sup>25</sup> *First Annual Report* ¶ 6 (emphasis added; internal quotations omitted).

of-the-art cable system can watch any one of literally thousands of different video programs, listen to one of more than ten thousand audio recordings, dial any one of millions of telephone numbers, or view any one of billions of pages on the World Wide Web. At no previous point in history have so many information, entertainment, and communications resources from so many diverse sources been available to American homes.

The evolution of the video marketplace over the past decade cannot be ignored. Competition is not only pervasive but also effective. The Commission's 10-year review of the state of the market should acknowledge -- and celebrate -- this fact.

### **III. COMCAST HAS BEEN THE INDUSTRY LEADER IN RESPONDING TO CONSUMER DEMAND AND THE PRESSURES AND CONSTRAINTS IMPOSED BY COMPETITION.**

Comcast is at the forefront of this evolution. Ten years ago, Comcast served approximately 2.6 million video customers. Since then, Comcast has grown to serve over 21 million video customers and to pass 39 million homes in 35 states plus the District of Columbia.<sup>26</sup> In the last year alone, Comcast more than doubled its customer base when it acquired AT&T Broadband's cable systems. As its customer base has grown, Comcast has faced new challenges in meeting its customers' demands, especially in the face of aggressive competition. Comcast's primary multichannel video competitors, DIRECTV and DISH Network, have presented a formidable competitive threat by focusing on channel capacity, digital technology, exclusive programming, interactive functionality, and customer service. Comcast

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<sup>26</sup> See Comcast Corp., Presentation to Merrill Lynch U.S. Media and Entertainment Conference, slide 4 (June 4, 2003) ("Merrill Lynch Presentation"), available at <http://www.cmcsk.com/downloads/MerrillLynchMedia060403.ppt>; Comcast Corp., *Fact Sheet*, at [http://www.cmcsk.com/pressroom/corp\\_factsheet.cfm](http://www.cmcsk.com/pressroom/corp_factsheet.cfm).

has responded to these challenges with enormous investments in system upgrades and rebuilds, improved service quality and customer service, new technology, innovation, and advanced services. The competition that now exists proves the success of Congress's decision to make competition and deregulation the pillars of video policy.

**A. Comcast's \$39 Billion Investment To Upgrade Its Cable Systems Has Permitted It To Respond to Competition by Improving Quality and Offering New Services.**

We recently calculated that, by the end of next year, we (combined with AT&T Broadband) will have invested over \$39 billion in rebuilding and upgrading our cable systems.<sup>27</sup> For 2003, we expect to spend approximately \$4 billion on capital improvements, with \$1.3 billion dedicated solely to upgrading cable systems.<sup>28</sup> In the second quarter of 2003 alone, we spent \$1.05 billion in capital improvements and completed the upgrade of nearly 16,000 miles of cable plant, so that more than 89% of our network has been upgraded to provide two-way digital and high-speed Internet services.<sup>29</sup> We consistently have met our upgrade targets, and with more than 28,100 miles of cable plant upgraded so far this year, we expect to continue to meet our upgrade targets for 2003 and 2004.<sup>30</sup>

Our upgraded networks have permitted us to improve the quality of our traditional cable service and offer new services to consumers. In upgraded areas, every Comcast customer -- even

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<sup>27</sup> Prior to the acquisition of AT&T Broadband, over 95% of the systems we owned were already upgraded. Merrill Lynch Presentation, *supra* note 26, at slide 8.

<sup>28</sup> *See id.*

<sup>29</sup> *See* Press Release, Comcast Corp., *Comcast Reports Second Quarter 2003 Results 3* (July 31, 2003) ("2Q Report"), available at <http://www.cmesk.com/news/CMCSK073103-u97lw.pdf>.

<sup>30</sup> *See* Merrill Lynch Presentation, *supra* note 26, at slide 8.

those who subscribe only to “antenna service” -- has benefited from the improved picture quality and network reliability. Based on current consumer demand for our various services, our typical upgraded 750 MHz plant is designed to provide 84 analog video channels, 216 digital video channels, 8 HDTV channels, VOD service for 400 digital video customers at any one time, high-speed data service for 400 subscribers, and telephone service for 300 customers.<sup>31</sup> As of June 30, 2003, we offered digital cable service to all 21.36 million of our basic subscribers, and we were providing digital cable service to about one-third (or 6.95 million) of these customers; we offered high-speed Internet service to 32.12 million homes and delivered it to approximately 14% of those customers (or 4.39 million); and we offered telephone service to 9.16 million homes and were providing it to approximately 15% of those customers (or 1.37 million).<sup>32</sup>

Newer services and features are also being rolled out quickly. Although VOD -- which allows Comcast customers to watch, fast forward, rewind, and pause video programming from a library of movies and “best-of” programming from leading cable and broadcast networks at any time of the day -- was first introduced only a year ago on a Comcast system, we are already making VOD available to 20% of all subscribers and expect to make it available to 50% of subscribers by the end of 2003.<sup>33</sup> Our servers currently hold approximately 1200 hours of content at any one time, and Comcast’s HBO and Showtime subscribers who have VOD

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<sup>31</sup> Dave Fellows, Executive Vice President and Chief Technology Officer, Comcast Corp., Presentation at Comcast Analyst Day, slide 4 (May 16, 2003), *available at* <http://www.cmcsk.com/speakers.cfm?Show=yes>. As consumer demand for HDTV, VOD, high-speed data, and telephone services increase, Comcast will need to reapportion its capacity among services.

<sup>32</sup> *See* 2Q Report at 11.

<sup>33</sup> *See id.* at 3.

capabilities enjoy HBO's and Showtime's VOD services at no extra charge.<sup>34</sup> HDTV, initially launched in Philadelphia in 2001, had already been extended to 54% of our customer base as of June 30, 2003, and is expected to be available to 65% by the end of 2003.<sup>35</sup> The Comcast HDTV service includes high-definition broadcasts of major broadcast networks including PBS, where available, as well as ESPN, HBO, and Showtime.<sup>36</sup>

We have also dedicated considerable resources to improving our customer service and retail presence, two areas in which competition with DIRECTV and DISH Network is especially fierce.<sup>37</sup> At the beginning of 2003, Comcast had 100 call centers to handle an estimated

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<sup>34</sup> The Comcast VOD service includes content from providers such as Anime Network, Atom Television, BBC America, Bloomberg, Fox Cable Networks Group, Comcast SportsNet, Comedy Central, Court TV, C-SPAN, the Golf Channel, NBC (in Philadelphia and New Jersey), Outdoor Life Network, PRIMEDIA, SPEED Channel, Sundance Channel, TBS, and WISDOM Television. Comcast's VOD service also includes special programming for kids from Cartoon Network, Classic Kids, Boomerang, and Backyard Safari. Other niche programming focuses on a broad range of topics from Arts & Crafts to Motor Trend to TeenNews.

<sup>35</sup> See 2Q Report at 3.

<sup>36</sup> Customers in Philadelphia and the Baltimore/Washington markets also have access to more than 200 professional sporting events in HDTV from Comcast SportsNet, including games featuring the Philadelphia Phillies, Flyers, and 76ers; the Washington Wizards and Capitals; and the Baltimore Orioles. Comcast is continuing to work with cable and broadcast programmers to expand its HDTV offerings. Comcast is also rolling out two new HDTV channels, INHD and INHD2, including sports, movies, family programming, and general interest programs such as concerts and other specials.

<sup>37</sup> Large consumer electronics retail chains, such as Best Buy, Circuit City, and Radio Shack, have aggressively sold DIRECTV and DISH Network equipment and service for years. DIRECTV and the DISH Network are using these retail outlets to promote packages that are competitive in features and in price. See Best Buy, *Guaranteed Install Before Kickoff*, DIRECTV Promotion, Weekly Ad for Sept. 7- Sept. 13, 2003 (offering several DIRECTV packages, including one for four months of Total Choice Premier with local channels for free); Circuit City, *Catch the Best Gridiron Action*, Weekly Ad for Sept. 7 - Sept. 13, 2003 (offering four months of Total Choice Premier for free with purchase of a DIRECTV system and a subscription to NFL SUNDAY TICKET); Radio Shack, *Biggest Deals on Satellite TV Ever!*, (footnoted continued...)

190 million calls in 2003.<sup>38</sup> To improve customer service and meet our customers' demands, we are investing approximately \$90 million to establish eight new facilities, expand seven existing facilities, and hire approximately 3,000 more customer service representatives this year.<sup>39</sup>

With respect to our retail efforts, the success of Comcast's retail program in Philadelphia-area Best Buy stores prompted the companies to expand the program to Baltimore, Knoxville, Nashville, and Washington D.C.<sup>40</sup> A total of thirty-one Best Buy stores now sell digital-ready HDTV sets and Comcast Digital Cable using a co-branded Sales Activation Kit. The \$79.99 Comcast service Activation Kit, which is free of charge when customers activate Digital Cable and also purchase an HDTV set from Best Buy, includes \$250 worth of services including free service installation, two months of free HBO and Showtime, and several Pay-Per-View movie coupons. In Chicago, we recently reached HDTV marketing deals with twenty local retailers, including Abt Electronics.<sup>41</sup> We have similar relationships with Tweeter, Staples, Gateway,

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(...footnote continued)

Monthly Flyer for Sept. 2003 (offering a free two-room DISH Network system and a DVR with a subscription to DISH Network). These retail promotions are attached at Exhibit C.

<sup>38</sup> Suzanne Keenan, Senior Vice President, Customer Service, Comcast Corp., Presentation at Comcast Analyst Day, slide 3 (May 16, 2003), available at <http://www.cmcsk.com/speakers.cfm?Show=yes>.

<sup>39</sup> *Id.* at slide 6.

<sup>40</sup> See Press Release, Comcast Corp., *Comcast and Best Buy Expand Philadelphia Retail Program for HDTV and Digital Cable to New Markets* (Apr. 8, 2003), available at <http://www.cmcsk.com/pressroom/news/20030408-105953.cfm?ReleaseID=105953>.

<sup>41</sup> Comcast reached similar marketing agreements with ABC Warehouse and Hawthorne Stores, two retailers in Detroit.

RadioShack, and Circuit City.<sup>42</sup> In total, our services are now featured in 2,300 retail locations and, by year end 2003, are projected to be available in 3,500 locations.

Over the past ten years, Comcast has evolved with the video marketplace. As competition has increased and technology has changed the way consumers view the substitutability of MVPD competitors, we have fought for each and every customer by investing in our networks, programming, new services, and customer service. Every decision we make accounts in some way for competition from DIRECTV and the DISH Network, and other video programming options. As discussed below, nowhere is this more evident than in a review of the events of the past year, including Comcast's acquisition of AT&T Broadband.

**B. Comcast's Acquisition of AT&T Broadband's Cable Systems Has Brought New Services and Choices to More Consumers Even More Quickly than Expected.**

The principal public interest benefits that Comcast projected would result from its acquisition of AT&T Broadband were the acceleration of rebuilds and upgrades, expansion of programming choices, and the delivery of broadband services.<sup>43</sup> We are delivering on those promises.

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<sup>42</sup> See, e.g., Press Release, Comcast Corp., *Comcast and Tweeter Expand HDTV Retail Program* (Sept. 3, 2003), available at <http://www.cmesk.com/pressroom/news/20030903-117278.cfm?ReleaseID=117278>; *Comcast Shacks Up with RadioShack*, Multichannel News, May 28, 2003, available at [http://www.multichannel.com/index.asp?layout=story\\_stocks&articleId=CA302119&pubdate=05/28/2003&stt=001&display=searchResults](http://www.multichannel.com/index.asp?layout=story_stocks&articleId=CA302119&pubdate=05/28/2003&stt=001&display=searchResults).

<sup>43</sup> *In re Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion & Order, 17 FCC Rcd. 23, 246 ¶¶ 173-199 (2002); Applications and Public Interest Statement of AT&T Corp. and Comcast Corporation, MB Docket No. 02-70, at 28-47 (Feb. 28, 2002).

With our acquisition of AT&T Broadband's cable systems, we have accelerated system rebuilds to ensure that more households will have access to more programming choices, and more new services, faster than was otherwise possible. When Comcast acquired the AT&T Broadband systems, only 66% of those systems had a capacity of 750 MHz or greater, 7% were between 550-610 MHz, 6% were 550 MHz, and 21% were under 550 MHz.<sup>44</sup> Today, less than one year later, eighty-five percent (85%) of these systems have a capacity of at least 750 MHz and are upgraded to deliver two-way digital cable and high-speed Internet service.<sup>45</sup> With these systems, substantially more consumers are now able to purchase new broadband and digital services. By upgrading its network and offering new services, Comcast has been better able to respond to its competitors and to stem the loss of subscribers AT&T Broadband was experiencing as late as the fourth quarter of 2002.<sup>46</sup>

**IV. TODAY'S MARKET IS CHARACTERIZED BY AGGRESSIVE COMPETITION BETWEEN COMPETITORS WITH SUBSTITUTABLE SERVICES, BUT EACH WITH UNIQUE AND DIFFERENTIATING ADVANTAGES.**

The events of the past year provide indisputable proof that cable operators face effective competition for video customers. DIRECTV and DISH Network -- whose nationwide reach and all-digital platforms provide a significant competitive and marketing advantage over all other competitors -- offer hundreds of channels of digital programming at competitive prices and with

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<sup>44</sup> See Merrill Lynch Presentation, *supra* note 26, at slide 8.

<sup>45</sup> See 2Q Report at 3.

<sup>46</sup> Press Release, Comcast Corp., *Comcast Reports First Quarter 2003 Results* 11 (May 8, 2003), available at <http://www.cmcsk.com/news/CMCSK050803.pdf>. In the 12 months prior to the close of the merger, AT&T Broadband lost over 500,000 subscribers. That erosion has already been stopped and last quarter Comcast gained 35,200 subscribers in those systems. See 2Q Report at 3, 11.

inexpensive or free equipment, and continue to attract customers and experience significant growth. DIRECTV and DISH Network also present certain innovative programming services and features that cable operators cannot provide, as detailed below. Similarly, BSPs are offering unique bundles of services that typically include video programming, high-speed Internet, and telephone services. The cable industry's response to this intense competition has resulted in over 85 million homes now being passed by upgraded, two-way cable facilities that allow access to advanced digital and interactive services.<sup>47</sup>

**A. Competition from DIRECTV and DISH Network.**

DIRECTV and DISH Network continue to experience rapid subscriber growth. Of the approximately 90 million multichannel video subscribers nationwide,<sup>48</sup> DBS has now captured 20.36 million customers, or approximately 23% of all MVPD subscribers.<sup>49</sup> Over the past year, EchoStar's DISH Network subscribership increased by a robust 18%, bringing its total subscriber count to 8.8 million.<sup>50</sup> DIRECTV's subscribership grew 10.7% over the past year to a

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<sup>47</sup> *NCTA Overview*, *supra* note 7, at 2-3.

<sup>48</sup> *See Kagan Media Money*, June 17, 2003, at 8.

<sup>49</sup> The Yankee Group forecasts that DBS will continue its steady subscriber growth to serve 27.1 million U.S. households by the end of 2007. *See Forecast Sees Steady DBS Growth Through 2003*, CED, June 1, 2003. Other analysts project that DBS will reach the 30 million subscriber mark sometime around 2008-2009. *See Jimmy Schaeffler, Technical Innovations Drive Competition*, Satellite News, June 16, 2003. At this pace, it is estimated that DIRECTV and EchoStar will record well above 2 million net new subscribers for 2003, suggesting that "cable providers will need to look back over their shoulders at the oncoming competition." *Id.*

<sup>50</sup> *See Press Release, EchoStar Communications Corp., EchoStar Reports Second-Quarter 2003 Financial Results; EchoStar's DISH Network Adds 270,000 Net New Subscribers*, (Aug. 13, 2003), available at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=440663](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=440663). The DISH Network added 270,000 net new subscribers in the second quarter alone. *Id.*

total of 11.56 million subscribers.<sup>51</sup> Meanwhile, although Comcast has been among the few cable operators that have been successful in stemming subscriber losses and restoring growth, overall cable industry subscriber numbers have begun to decline as DBS continues to draw customers from cable.<sup>52</sup> Indeed, DIRECTV estimates that about 40% of its gross subscriber additions were former digital cable customers.<sup>53</sup>

Some experts have characterized the MVPD marketplace as “saturated” and one in which consumers readily migrate from one MVPD to another as they are enticed by new service offerings or lower prices.<sup>54</sup> And, although the cable industry has responded to its competitors’ advances each time, these responses have not dissuaded literally millions of customers from

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<sup>51</sup> See Press Release, Hughes Elecs. Corp., *Hughes Reports Strong Second Quarter 2003 Results; Attains Positive Net Income and Increases Company and DIRECTV U.S. Full-year Guidance* (July 16, 2003), available at [http://www.hughes.com/ir/releases/2003\\_results/q2\\_2003/default.asp](http://www.hughes.com/ir/releases/2003_results/q2_2003/default.asp); see also Jimmy Schaeffler, *supra* note 49 (“DirecTV is headed for another hot year, bringing in a solid share of the total 2.4 million net new subscribers we estimate will be added by the U.S. DBS industry for all of 2003.”).

<sup>52</sup> See *SBCA Press Release*, *supra* note 16, at 1 (“In the first six months of 2003 the DBS industry had net additions of 1.01 million subscribers, while the top ten cable operators showed net losses of about 80,000 net basic subscribers, according to market research from the Leichtman Research Group of New Hampshire.”); *Ninth Annual Report* ¶ 6 (noting that “calendar year 2002 may be the first year in which the [cable] industry as a whole has had a net loss of subscribers”).

<sup>53</sup> See Mike Farrell, *DirecTV Powers Strong Hughes Q2*, *Multichannel News*, July 21, 2003, available at [http://www.multichannel.com/index.asp?layout=print\\_page&articleID=CA311859](http://www.multichannel.com/index.asp?layout=print_page&articleID=CA311859).

<sup>54</sup> See Armand Musey, *Dollars and Sense: The Cost of Competition—A Good Deal for Consumers*, *Via Satellite*, Jan. 1, 2003 (the “U.S. multichannel television industry has become decidedly more competitive throughout the past year because of the competitiveness of the DBS companies on a standalone basis, benefiting both rural and urban consumers.”); *Competition to Cable*, *Warren’s Cable Rate Regulation Monitor*, Jan. 13, 2003 (explaining that “TV is becoming [a] ‘commodity’” and the “result is likely to be increasing churn: ‘It’s a condition of this kind of market that there is no customer loyalty. What matters is what is on TV, not how you get it.’”).

opting for competitive offerings from DIRECTV and DISH Network. Competition is fiercer than ever as the DBS providers continue to offer new promotions to attract as many new customers as possible.<sup>55</sup> At this point, the consumer's "biggest decision is whether to go with cable or satellite, but the choices don't stop there."<sup>56</sup>

## **B. Programming Choices.**

In addition to having their choice of multichannel providers, consumers have an abundance of choice among video programming packages from each of these providers.<sup>57</sup> DIRECTV currently offers 4 standard packages of programming and 18 specialty packages,<sup>58</sup> while DISH Network offers 9 standard packages of programming and 20 specialty packages.<sup>59</sup>

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<sup>55</sup> DBS consumers' up-front equipment costs have plummeted from \$700 nine years ago to little or nothing in recent years. For example, EchoStar is now offering DBS receiver equipment for \$49.99, and customers who purchase the equipment get a \$49.99 credit their first bill, making the equipment free. See EchoStar, *Free Dish*, at <http://www.dishnetwork.com/content/getdish/FreeDish/index.shtml> (last visited Aug. 21, 2003). Moreover, EchoStar is offering new DISH Network subscribers a price guarantee on its least expensive package through January 2005. See Teresa McUSIC, *Cable vs. Satellite: What's Best For You?*, Star-Telegram (Dallas-Ft. Worth), Mar. 14, 2003, available at <http://www.dfw.com/mld/dfw/business/5390946.htm>.

<sup>56</sup> *Cable or Satellite?*, Consumer Reports, March 2003. Consumer Reports declares that "choosing among such services isn't trivial" because "cable and satellite companies are pushing services that promise a broad selection of programming plus enhanced picture and sound quality." See *id.* (explaining consumers' options for HDTV programming, VOD, interactive TV, and digital recording).

<sup>57</sup> In this sense, competition has expanded consumers' choices exponentially, not just linearly.

<sup>58</sup> See generally DIRECTV, Inc., *Packages* (describing four standard programming packages, four movie packages, a regional sports package, ten sports packages, and three international packages), at <http://www.directv.com/DTVAPP/packages/Landing.jsp> (last visited Sept. 2, 2003).

<sup>59</sup> See generally EchoStar Satellite Corp., *Basic Packages* (describing nine standard packages), at <http://www.dishnetwork.com/content/programming/packages/index.shtml> (last (footnoted continued...))

The standard packages range in price from \$24.99 per month for 50 channels on DISH Network, to \$74.99 per month for 150 channels on DISH Network, or \$87.99 per month for 195 channels on DIRECTV.<sup>60</sup> DIRECTV and DISH Network also have programming packages specifically designed for the Hispanic market, consumers interested in International programming (*e.g.*, Greek, Polish, Russian, Arabic, Chinese, Korean, etc.), and sports fans interested in global, national, and regional sports programming services. With such a variety of choices at varying price points, it is clear that DIRECTV's and DISH Network's offerings have a broad market appeal to consumers across socioeconomic backgrounds regardless of their income level, ethnicity, or language preference.

Similarly, in virtually all of its markets, Comcast offers consumers a broad variety of choices. Comcast generally offers consumers a choice of five different tiers of programming (not including movie packages or pay-per-view): Basic (typically including 23 channels), Expanded Basic (typically 39 channels), Value Pack (an analog tier with typically 8 channels), Digital 1 (typically 15 channels), and Digital 2 (typically 26 channels).<sup>61</sup> Comcast's Basic, Enhanced Basic, and Value Pack provide customers with local broadcast stations and varying levels of analog programming channels. Digital cable subscribers receive a diverse array of

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visited Sept. 2, 2003). DISH Network also offers four movie packages, nine International packages, an HDTV package, and six sports packages. *See id.*

<sup>60</sup> *See id.*; DIRECTV, Inc., *Packages*, *supra* note 58.

<sup>61</sup> Channel counts vary from market to market depending on local conditions. The channel counts provided are approximations and do not apply to a particular system. Comcast also offers multiple premium channels available on a per-channel basis as well as a growing array of pay-per-view and VOD services.

additional programming.<sup>62</sup> In addition, Comcast now offers two specialty Spanish-language tiers in markets with large Hispanic populations.<sup>63</sup>

Comcast also continues to offer our subscribers the best local and regional programming. For example, we are the largest supporter of public, educational, and government (“PEG”) access programming in the country and are an industry leader in our commitment to PEG, providing financial, technical, and other forms of assistance, in addition to providing channel set-asides as required by local franchising authorities.<sup>64</sup> Comcast also produces and distributes CN8, which provides extensive and tailored local programming including news, discussions of public issues, locally and regionally focused call-in programs, regional sports coverage, and family entertainment.<sup>65</sup> CN8 provides hour-long newscasts at 7:00 p.m. and 10:00 p.m. and offers a

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<sup>62</sup> Comcast’s digital subscribers often receive specialized programming (*e.g.*, Discovery Kids, Nick Too, BBC America, Fine Living, C-SPAN 3) that may not otherwise be carried in analog due to capacity constraints. They also receive 45 channels of commercial-free digital music.

<sup>63</sup> While composition and pricing vary from market to market, in general, the first of these tiers costs between \$5.95 and \$11.95 per month, and includes 10 Spanish-language video channels, 13 audio channels, and the rental of a digital set-top box. The second tier adds 6 to 10 channels for about \$5 per month or less. Both tiers are also offered in various packages with Basic, Expanded Basic, and Digital tiers.

<sup>64</sup> Comcast provides more than \$100 million a year in direct financial support for PEG channels, and channel space for more than 2,400 PEG channels across the country.

<sup>65</sup> Today, CN8 is one of the nation’s largest regional cable networks, serving 6.2 million homes in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont. *See CN8, The Comcast Network*, at <http://www.cn8.tv/> (last visited Sept. 3, 2003).

wide range of discussions of local and regional issues; as its audience has grown, so has its presence in and commitment to the communities it serves.<sup>66</sup>

### C. High Definition Television.

DIRECTV and DISH Network trumpet their significant competitive accomplishments: “The DBS industry has achieved a significant level of popularity because it has always put its customers’ preferences first and taken the lead in delivering innovations, such as HDTV, DVRs, and Interactive TV to the television experience.”<sup>67</sup> HDTV is a current battleground. DIRECTV and DISH Network are exploiting their ability to deliver HDTV ubiquitously nationwide,<sup>68</sup> and continuing to expand HDTV menus -- DISH Network recently announced the availability of two new HDTV networks, HDNet and HDNet Movies, and DIRECTV announced additional high-definition sports content.<sup>69</sup>

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<sup>66</sup> Comcast also provides extensive public service announcements. For example, twice a year, for approximately a week each time, Comcast presents PSAs for “Cable Positive,” promoting AIDS/HIV awareness, on multiple different channels. Other public service topics are covered in other “waves” of PSAs. These include National Volunteerism Month, United Way, the CityYear AmeriCorps program, literacy, public health, and other topics of national and local importance.

<sup>67</sup> *SBCA Press Release, supra* note 16, at 2 (quoting EchoStar Chairman and CEO Charles Ergen).

<sup>68</sup> See Jimmy Schaeffler, *supra* note 49 (stating that ubiquitous deployment “is something that cable may never be able to do . . . DBS retains a slight advantage for the remainder of 2003, at least in the battle for HDTV subscribers.”). Cable's high-definition offerings have been “spottier,” partly because new equipment must be installed in thousands of transmission facilities, at \$100,000 to \$300,000 per facility. See Peter Grant, *In High-Definition TV Race, Satellite Leads Cable Systems*, Wall St. J., July 24, 2003.

<sup>69</sup> See Press Release, EchoStar Communications Corp., *DISH Network to Add HDNet, HDNet Movies; DISH Network Unveils New SuperDish Technology Capable of Providing Consumers up to 50 HDTV Channels* (May 1, 2003), at [http://www.corporateir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=407976](http://www.corporateir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=407976); Press Release, DIRECTV, Inc.,

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In response, Comcast has reached agreements in multiple markets to carry HDTV programming provided by most of the major broadcast networks, ESPN, HBO, and Showtime. For example, Comcast recently announced that it will provide its customers with all of ABC's Monday Night Football games, as well as 18 other NFL games on ESPN, in HDTV.<sup>70</sup> In addition, in the Philadelphia and Baltimore/Washington, DC markets, Comcast SportsNet is offering more than 200 professional sporting events in HDTV annually, including games featuring the Philadelphia Phillies, Flyers, and 76ers; the Washington Wizards and Capitals; and the Baltimore Orioles.<sup>71</sup> Although many cable systems are beginning to catch up to DBS with their own HDTV programming, for the moment, DBS continues to offer more HDTV channels than most cable operators.<sup>72</sup> Additionally, BSPs are also beginning to offer HDTV

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*CBS Sports and DIRECTV Join to Present "The NFL On CBS" In HDTV* (Aug. 5, 2003), at [http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=08\\_05\\_2003B](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=08_05_2003B). EchoStar also recently announced the unveiling of its "Superdish," which can receive programming from satellites at three different orbital locations, thereby allowing customers to access hundreds of channels, local channels in new markets, HDTV channels, and international programming.

<sup>70</sup> See Press Release, Comcast Corp., *Comcast To Offer ABC's Monday Night Football in HDTV* (Sept. 2, 2003), available at [http://biz.yahoo.com/prnews/030902/phtu002\\_1.html](http://biz.yahoo.com/prnews/030902/phtu002_1.html); Press Release, Comcast Corp., *Comcast and ESPN Announce ESPN HD Distribution Agreement* (July 31, 2003), available at <http://www.cmcsk.com/pressroom/news/20030731-115239.cfm?ReleaseID=115239>.

<sup>71</sup> Comcast also carried the recent U.S. Open tennis matches in HDTV in Delaware, New Jersey, and Pennsylvania, see Press Release, Comcast Corp., *Comcast To Air 2003 U.S. Open Matches in High Definition* (Aug. 28, 2003), available at [http://biz.yahoo.com/prnews/030828/phth020\\_1.html](http://biz.yahoo.com/prnews/030828/phth020_1.html), among other markets.

<sup>72</sup> See Seth Schiesel, *Cable or Satellite? Please Stay Tuned*, N.Y. Times, July 31, 2003, at G1 ("Satellite subscribers still have access to more high-definition programming than most cable customers."). Cable companies may have an edge, however, when it comes to offering HDTV from local stations and network affiliates, because satellites have limited ability to serve many different areas. See *id.* Comcast currently has carriage agreements with more than 20 PBS  
(footnoted continued...)

programming, presenting an HDTV alternative that includes bundled video, data, and phone services.<sup>73</sup>

#### **D. Sports Programming.**

Sports programming packages are another key competitive battleground. DIRECTV has been highly successful in attracting subscribers with its sports programming. For example, DIRECTV recently renewed its *exclusive* rights to the extremely popular and lucrative “NFL SUNDAY TICKET,” which is a powerful lure for sports fans.<sup>74</sup> While there is no sports programming package comparable to DIRECTV’s NFL SUNDAY TICKET in attracting subscribers, cable operators respond competitively by offering other popular sports packages. For example, Comcast offers professional and college sports subscription packages in addition to

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stations for digital carriage and expects that pending discussions with a comparable number of additional PBS stations will lead to digital carriage on Comcast systems in coming months.

<sup>73</sup> For example, RCN now offers a 10 HDTV channel tier in five of its markets. See Press Release, RCN Corp., *RCN Launches High Definition TV Service in Queens* (July 30, 2003), at <http://www.rcn.com/investor/pr.php?id=163>.

<sup>74</sup> See Press Release, DIRECTV, Inc., *NFL and DIRECTV Extend and Expand Exclusive NFL SUNDAY TICKET Agreement for Five Years* (Dec. 11, 2002), available at [http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=12\\_11\\_2002A](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=12_11_2002A). Over one million DIRECTV subscribers receive NFL SUNDAY TICKET. See Mark Albright, *DirecTV Service Appeals to Fantasy Football Fans*, St. Petersburg Times, Aug. 18, 2003, available at [http://www.sptimes.com/2003/08/18/Technology/DirecTV\\_service\\_appea.shtml](http://www.sptimes.com/2003/08/18/Technology/DirecTV_service_appea.shtml). NFL SUNDAY TICKET enables DIRECTV customers to see virtually any NFL Sunday afternoon game through the 17-week regular season for \$239 (or even less as part of a promotion). DIRECTV recently announced new interactive enhancements to its NFL SUNDAY TICKET programming. See Press Release, DIRECTV, Inc., *DIRECTV Kicks Off 2003 NFL SUNDAY TICKET With New Interactive Enhancements* (Aug. 5, 2003) (describing enhancements including fantasy football league features, the ability to “follow minute-by-minute developments of nearly every NFL game each week, receive alerts when teams are in the ‘red zone,’ or when significant plays have just taken place along with streaming statistical information”), at [http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=08\\_05\\_2003C](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=08_05_2003C).

other Comcast digital cable sports programming.<sup>75</sup> Although cable operators' sports packages have yet to realize the success of DIRECTV's NFL SUNDAY TICKET in attracting subscribers, their focus on meeting their customers' demands for regional and local programming has remained a means to distinguish them from the competition.

#### **E. Local Broadcast Channels.**

In the past, DBS faced legal and technological impediments to offering local broadcast channels to customers, which arguably made it a less than complete substitute for cable service. That changed several years ago with the enactment of the Satellite Home Viewer Improvement Act ("SHVIA").<sup>76</sup> EchoStar now offers local channels in 70 markets.<sup>77</sup> DIRECTV recently announced that it now offers local channels in 64 markets, representing more than 72% of U.S. television households, and with the launch of a new satellite planned for the fourth quarter of this year, DIRECTV plans to deliver "local-into-local" into an additional 38 markets.<sup>78</sup>

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<sup>75</sup> See Comcast Corp., *Sports* (describing Comcast's sports programming offerings), at <http://www.comcast.com/Benefits/CableDetails/Slot7PageOne.asp> (last visited Aug. 21, 2003).

<sup>76</sup> Pub. L. No. 106-113, 113 Stat. 1501, 1501A-523 to 1501A-545 (1999).

<sup>77</sup> See Press Release, EchoStar Communications Corp., *DISH Network Satellite Television Brings Local TV Channels to Little Rock, Ark.* (July 2, 2003), at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=427680](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=427680).

<sup>78</sup> See Press Release, DIRECTV, Inc., *DIRECTV To Offer Local Channels in Topeka, Kan.* (July 31, 2003), available at [http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=07\\_31\\_2003](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=07_31_2003). The SBCA notes that DISH Network and DIRECTV's "local packages reach more than 70 percent of the national television market, with plans to reach beyond 80 percent by the end of 2003." *SBCA Press Release*, *supra* note 16, at 2.

## F. Video-On-Demand, Streaming Video, and Digital Video Recorders.

Another battleground is in the “personalized” viewing experiences represented by VOD, streaming video over the Internet, and Digital Video Recorders (“DVRs”).<sup>79</sup> Cable has been at the forefront in the provision of VOD and subscription video-on-demand (“SVOD”). For example, Comcast is rolling out an extensive VOD service, Comcast ON DEMAND, that includes hundreds of hours of free VOD content (in addition to an array of SVOD content).<sup>80</sup> DBS is countering by integrating DVRs, which offer VOD-like features, directly into satellite converter boxes.<sup>81</sup> DISH Network recently announced that it will offer its new DISH Player-DVR 510, a combination satellite TV receiver/DVR, and its DISH Video On Demand service free to new customers as part of its latest “Free Dish” promotion.<sup>82</sup> Other competitors including

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<sup>79</sup> VOD allows consumers to order video programming from a central server at any time of the day, and to fast-forward, rewind, and pause the programming. Streaming video is similar to VOD except that consumers order the video programming over the Internet and often have it displayed on their PC. DVRs allow consumers to record video programming they receive onto a hard drive and view it at their convenience with many of the same functionalities VOD users enjoy (*i.e.*, fast forward, rewind, etc.).

<sup>80</sup> See Press Release, Comcast Corp., *Comcast Announces Additional Content Partners for Video On Demand Service in Philadelphia—New Agreements Expand Breadth of ON DEMAND Programming Choices* (Jan. 17, 2003), available at <http://www.cmcsk.com/PressRoom/news/20030117-99715.cfm?ReleaseID=99715>.

<sup>81</sup> See Seth Schiesel, *supra* note 72 (quoting Terry L. Ferguson, DIRECTV Vice President, “I am not alarmed by VOD. It is an interesting kind of feature, but a DVR can do all that and more and provides more flexibility.”).

<sup>82</sup> See Press Release, EchoStar Communications Corp., *DISH Network First To Offer Free Digital Video Recorder* (Aug. 25, 2003) (noting that “[w]ith the new Free DISH promotion, new customers will receive a free DISH Player - DVR 510, satellite dish, remote control and free standard professional installation”), available at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=442977](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=442977). “DISH Network’s new DISH Video On Demand service allows viewers to skip commercials and other pre-recorded programming  
(footnoted continued...)”

BSPs, such as RCN and Knology, SMATV providers, and even broadcasters are offering VOD in various forms.<sup>83</sup> Comcast, in turn, is testing DVR capabilities in Philadelphia and markets around Washington, D.C., and plans to integrate DVR capabilities into its ON DEMAND service.<sup>84</sup>

Personal computers with Internet connections also are becoming an effective method for consumers to have “personalized” viewing experiences. RealNetworks, Inc. reports that over one million users subscribe to its \$9.95 per month streaming video service, RealOne SuperPass, which includes video content from CNN, ABCNEWS.com, The Weather Channel, FOXSports, CNN Sports Illustrated, and E!, among others.<sup>85</sup> Yahoo! Inc. offers a similar service, Yahoo!

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(...footnote continued)

without videotape, as well as pause live TV, perform slow-motion instant replays, fast forward and fast reverse.” *Id.*

<sup>83</sup> See Press Release, Knology Inc., *TV When Columbus Wants To Watch It: Knology Launches HBO on Demand and Puts Subscribers in Control of Program Schedules* (Apr. 16, 2003), at <http://www.knology.com/news/index.details.cfm?pkey=188>; Press Release, RCN Corp., *RCN Corporation Launches SVOD: HBO ON DEMAND* (July 31, 2003), available at <http://www.rcn.com/investor/pr.php?id=164>; Press Release, Eagle Broadband, Inc., *Eagle Broadband and AmericanVOD Partner—Companies to Make Wider Range of Complete Video-on-Demand Services Available to Residential and Hospitality Customers* (July 2, 2003) (highlighting VOD options for SMATVs), at <http://www.eaglebroadband.com/newsroom/news.asp?ID=408>; Stefanie Olsen and Evan Hansen, *Disney Preps Wireless Video Service*, CNET News.com (Apr. 7, 2003) (later this year, Disney will begin testing its VOD service, MovieBeam, delivered by broadcast signals to a separate set-top box), at [http://news.com.com/2100-1031\\_3-995846.html](http://news.com.com/2100-1031_3-995846.html).

<sup>84</sup> See David Lieberman, *Comcast To Test DVRs That Use Cable Lines*, USA Today, May 12, 2003, available at [http://www.usatoday.com/tech/news/2003-05-12-comcast\\_x.htm](http://www.usatoday.com/tech/news/2003-05-12-comcast_x.htm); Merrill Lynch Presentation, *supra* note 26, at slide 14.

<sup>85</sup> See Press Release, RealNetworks Inc., *CBS and RealNetworks Bring "BIG BROTHER 4" Live to the Internet* (July 8, 2003), available at <http://www.realnetworks.com/company/press/releases/2003/bigbrother4.html>; see also RealNetworks Inc., *Premium Content You Can* (footnoted continued...)

Platinum, also priced at \$9.95 per month.<sup>86</sup> Other content providers, including C-SPAN, Bloomberg, and ESPN, are streaming video content on their own websites.<sup>87</sup> Major film studios are also offering video content on the web: the online movie service Movielink<sup>88</sup> has now entered licensing agreements or affiliations with every major studio except for 20<sup>th</sup> Century

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(...footnote continued)

*Access With Your SuperPass* (listing content included for a flat, monthly rate and providing links to the content), at <http://www.real.com/realone/entitlements.html> (last visited Sept. 9, 2003).

<sup>86</sup> See Press Release, Yahoo! Inc., *Yahoo! Unveils its Premium Online Video and Audio Service, Yahoo! Platinum* (Mar. 17, 2003), available at <http://yhoo.client.shareholder.com/ReleaseDetail.cfm?&ReleaseID=104618>. Yahoo! Platinum offers content from Showtime (boxing), the NHL, National Geographic, CNBC, Major League Soccer, BBC America, ABC News, CBS Marketwatch, NASCAR, Discovery, The Learning Channel, The Weather Channel, and others. See Matt Stump, *Yahoo Platinum: The Broadband Content Play*, Multichannel News, June 2, 2003, available at [http://www.multichannel.com/index.asp?layout=print\\_page&articleID=CA301819](http://www.multichannel.com/index.asp?layout=print_page&articleID=CA301819) (quoting Yahoo! executive Jim Moloshok, “Yahoo’s reach of 80 million home- and work-users is larger than the entire U.S. cable industry . . . [Yahoo] present[s] an alternative source of distribution”). Yahoo! Inc. offers a free two-week trial of Yahoo! Platinum at <http://platinum.yahoo.com/splash.html>.

<sup>87</sup> See generally National Cable Satellite Corp., *Watch/Listen* (including links to Broadband C-SPAN), at <http://www.c-span.org> (last visited Sept. 3, 2003); Bloomberg L.P., *Bloomberg TV* (linking to Bloomberg’s various video feeds), at <http://www.bloomberg.com/> (last visited Sept. 3, 2003); ESPN Inc., *ESPN Video Player*, at <http://msn.espn.go.com/> (last visited Sept. 3, 2003).

<sup>88</sup> Movielink is a joint venture of Metro-Goldwyn-Mayer Studios, Paramount Pictures, Sony Pictures Entertainment, Universal Studios, and Warner Bros. Studios, and offers both recent releases and classic movies. See Bob Tourtellotte, *Movielink Aims to Expand Content, Marketing*, CNET.com, Mar. 25, 2003, at <http://www.cnet.com/investor/news/newsitem/0-9900-1028-21064319-0.html>. Movielink recently announced a partnership with BellSouth, giving BellSouth broadband customers a customized version of Movielink, and offering movies ranging from \$2.95 to \$4.99 for a 24-hour viewing period. See *Movielink and BellSouth Launch Co-Branded Movie Rental Service for BellSouth Customers*, CNET.com (Aug. 11, 2003), at <http://www.cnet.com/investor/news/newsitem/0-9900-1028-21386096-0.html>.

Fox.<sup>89</sup> Although Movielink refrains from releasing subscriber numbers, its CEO recently stated that Movielink “continues to grow nicely.”<sup>90</sup>

### **G. High-Speed Internet and Bundled Services.**

Yet another key competitive arena is the provision of high-speed Internet access and bundled services. With respect to high-speed Internet access, the cable industry led the way with its deployment of cable Internet service, which spurred telephone companies to deploy digital subscriber line (“DSL”) service.<sup>91</sup> In addition, satellite, wireless, and BSPs have entered the market with their own high-speed Internet access services.<sup>92</sup> Cable, however, continues to lead the market in provision of high-speed Internet access because of its easier installation and higher customer satisfaction levels.<sup>93</sup>

As bundling of communications services becomes commonplace and expected by consumers, DIRECTV and DISH Network are increasingly partnering with the largest and most profitable of all communications enterprises, the regional Bell companies, to provide a full-

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<sup>89</sup> See Bob Tourtellotte, *Movielink Signs Disney to Online Movie Pact*, CNET.com, July 23, 2003, at <http://news.cnet.com/investor/news/newsitem/0-9900-1028-21346029-0.html>.

<sup>90</sup> See *id.* (quoting Jim Ramo, CEO, Movielink).

<sup>91</sup> See *NCTA Overview*, *supra* note 7, at 19.

<sup>92</sup> StarBand Communications, the only nationwide satellite provider of two-way high-speed Internet service to residential customers, has expanded its service area and announced its business-grade satellite modem this past year. See *NCTA Overview*, *supra* note 7, at 20.

<sup>93</sup> Cable Internet service accounts for 64% of all high-speed Internet customers nationwide. See *id.* at 19.

service bundle competitive with cable.<sup>94</sup> Recently EchoStar announced partnerships with both Qwest and SBC, touting the convenience of offering bundles of television, high-speed Internet access, and home and wireless phone service.<sup>95</sup> Qwest and BellSouth announced similar bundling agreements with DIRECTV.<sup>96</sup> Thus, the robust competition cable already faces will only grow more fierce as the industry's main rivals (DBS providers and telcos) join forces.<sup>97</sup>

BSPs also provide bundled video and communications services, and continue to report revenue and subscriber growth.<sup>98</sup> In addition to bundling of video, telephone, and high-speed

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<sup>94</sup> See Associated Press, *BellSouth To Offer DirecTV as Service*, N.Y. Times, Aug. 27, 2003, available at <http://www.nytimes.com/aponline/technology/AP-BellSouth-DirecTV.html?pagewanted=print&position=>.

<sup>95</sup> See Press Release, EchoStar Communications Corp., *Qwest Forges Agreement With EchoStar To Offer Satellite Services As Part Of Communications Bundle* (July 21, 2003), at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=433371](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=433371); Press Release, EchoStar Communications Corp., *SBC Communications, EchoStar Forge Strategic Partnership, Will Offer 'SBC Dish Network' Television Service* (July 21, 2003), at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=433365](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=433365). An EchoStar executive, in describing the benefits of bundling, stated "we'll also be able to bring to the table wireless (telephone) services, which cable can't. We want to one-up them; we want to be on the offensive." See Jeff Smith, *Competing with Cable TV; Qwest, EchoStar Make Deals to Step Up Marketing Clout*, Rocky Mtn. News, July 22, 2003.

<sup>96</sup> See Press Release, BellSouth Corp., *BellSouth and DIRECTV Announce Agreement to Sell Digital Satellite Television Service as Part of BellSouth Answers Bundle* (Aug. 27, 2003), at <http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=43807>; Press Release, Qwest Communications Int'l Inc., *Qwest Forges Agreement with DIRECTV To Offer Satellite Services as Part of Communications Bundle* (July 21, 2003), at [http://www.qwest.com/about/media/pressroom/1,1720,1304\\_archive,00.html](http://www.qwest.com/about/media/pressroom/1,1720,1304_archive,00.html).

<sup>97</sup> See Kevin Fitchard, *BellSouth Takes Baby Steps Into Entertainment Market*, Telephony (Aug. 18, 2003), at [http://telephonyonline.com/ar/telecom\\_bellsouth\\_takes\\_baby/](http://telephonyonline.com/ar/telecom_bellsouth_takes_baby/); Mike Farrell, *SBC to Co-Brand EchoStar's Dish*, Multichannel News, July 21, 2003, at [http://www.multichannel.com/index.asp?layout=print\\_page&articleID=CA312438](http://www.multichannel.com/index.asp?layout=print_page&articleID=CA312438).

<sup>98</sup> Knology's consolidated revenues rose to \$42.9 million in the second quarter (an increase of \$8 million over this time last year). As of June 30, 2003, Knology claimed 132,163 video  
(footnoted continued...)

Internet access, BSPs are expanding their offerings with features such as VOD and HDTV, while continuing to lead in offering bundles of broadband services, including telephony.<sup>99</sup>

#### **H. Future Competition and Competitive Advantages.**

The level of competition in the MVPD marketplace is likely to become even more aggressive if News Corp., which operates DBS systems around the globe, acquires a controlling interest in and management control of DIRECTV.<sup>100</sup> A merged News Corp./DIRECTV will have the ability to operate on a global scale with an unprecedented collection of resources, including: a leading Hollywood studio and extensive program production facilities; a major U.S. broadcast television network; owned-and-operated broadcast outlets nationwide reaching over 37%<sup>101</sup> of all homes; and the potential for offering advertising packages with both nationwide

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customers, 115,268 telephony customers, and 58,031 high-speed-data customers. See Karen Brown, *Knology Earnings Up, Subs Rise Slightly*, Multichannel News, Aug. 12, 2003, at [http://www.multichannel.com/index.asp?layout=print\\_page&articleID=CA316956](http://www.multichannel.com/index.asp?layout=print_page&articleID=CA316956). RCN's revenues were up by 6.5% as compared to a year ago, and RCN's subscriber numbers equaled 462,953 as of June 30, 2003. See Press Release, RCN Corp., *RCN Announces Second Quarter 2003 Results* (Aug. 11, 2003), at <http://www.rcn.com/corpinfo/earnings.php?id=167>.

<sup>99</sup> See RCN Corp., *Say Yes to a Bundle . . . And There's NO End to the Savings*, at <http://www.rcn.com/index.php> (details on bundled offers for new customers in the Boston area are available at [http://www.rcn.com/resilink/specialoffers/boston\\_new.php](http://www.rcn.com/resilink/specialoffers/boston_new.php)) (last visited Aug. 25, 2003); Starpower Communications, LLC, *Special Offers*, at [http://www.starpower.net/resilink/specialoffers/starpower\\_new2.php](http://www.starpower.net/resilink/specialoffers/starpower_new2.php) (last visited Aug. 25, 2003); Knology Inc., *Bundled Savings*, at <http://www.knology.com/services/bundled.savings.cfm> (last visited Aug. 25, 2003); Altrio Communications, *Our Services Service Packages*, at [http://www.altrio.net/packages/pkg\\_list.asp](http://www.altrio.net/packages/pkg_list.asp). These offers are attached at Exhibit D.

<sup>100</sup> See generally *DIRECTV/News Corp Application*.

<sup>101</sup> See *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of* (footnoted continued...)

and global reach. Through the shared resources of DIRECTV and News Corp., the merger will create economies of scope and scale that will lower DIRECTV's costs and reduce the risks associated with innovation.<sup>102</sup> "For example, with access to a base of over 11 million DIRECTV subscribers, News Corp. will face fewer risks in developing and launching new programming in the United States and thus will have greater incentive to expand supply."<sup>103</sup>

In addition, just as cable operators continue to invest in facilities-based competition, so too do DIRECTV and DISH Network. On August 7, 2003, EchoStar announced that it had successfully launched its ninth satellite, which will enable the DISH Network to deliver two-way, interactive broadband services.<sup>104</sup> DIRECTV also has plans to launch another satellite later

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*Radio Markets*, Report and Order and Notice of Proposed Rulemaking, MB Dkt. No. 02-277; MM Dkt. Nos. 01-235; 01-317; 00-244; and 03-130, FCC 03-127, ¶ 555 & n.1204 (July 2, 2003) (reporting that Fox owns 37 stations reaching 37.8% -- including the UHF discount -- of the national audience).

<sup>102</sup> See *DIRECTV/News Corp Application* at 33-35.

<sup>103</sup> *Id.* at 35.

<sup>104</sup> See Press Release, EchoStar Communications Corp., *EchoStar Successfully Launches Ninth Satellite* (Aug. 7, 2003) (noting that "EchoStar IX will join EchoStar's current fleet of eight satellites that provide DISH Network customers with hundreds of all-digital television channels, including interactive TV services, sports programming, high definition television and international programming"), available at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=440076](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=440076).

this year, its seventh.<sup>105</sup> Some experts speculate that rapid growth in the satellite broadband sphere may begin as early as 2004.<sup>106</sup>

As experts have noted, DIRECTV and DISH Network have a number of competitive advantages as against cable and BSPs, including: a national footprint which allows nationwide deployment of new services,<sup>107</sup> the ability to conduct nationwide marketing through broadcast television and print,<sup>108</sup> an established presence in leading retail store chains,<sup>109</sup> and aggressive discounting made possible by the low marginal cost of adding new customers.<sup>110</sup> Most, if not all of these advantages, will also be enjoyed by the latest entrant in the DBS business, Rainbow DBS.<sup>111</sup>

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<sup>105</sup> See Press Release, DIRECTV, Inc., *DIRECTV Names 39 New Local Channel Markets* (Mar. 19, 2003), available at [http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=03\\_19\\_2003A](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=03_19_2003A).

<sup>106</sup> See *2004 Is A Key Year -- ISCE Panelists See Big Satellite Broadband Growth Potential*, Communications Daily, Aug. 21, 2003, at 10.

<sup>107</sup> See Chuck Hewitt, *Outside the Box, Playing the National Card*, SKYREPORT.COM, Feb. 26, 2003, available at <http://www.skyreport.com/viewskyreport.cfm?ReleaseID=1053> (“With satellite’s national footprint we are able to reach sufficiently large special interest audiences with unique services that allow for successful business models. Plus our national distribution allows us to take advantage of our lead in the use of PVRs and IRDs.”).

<sup>108</sup> See Jimmy Schaeffler, *Cable Vs. Satellite: Who Wins Which Battles?*, Multichannel News, June 2, 2003, at 135 (“Satellite can market on a national basis, which no cable operator can do. Yet, conversely, cable can do a better job of marketing a distinctly local message.”)

<sup>109</sup> See *id.*; see also *supra* text accompanying note 37.

<sup>110</sup> See Mike Farrell, *DBS Dents Medicom*, Multichannel News, Aug. 11, 2003, at 26 (attributing an MSO’s subscriber loss to “aggressive discounting and increased local-to-local offerings by DBS competitors”).

<sup>111</sup> On July 17, 2003, Cablevision launched a satellite that will allow it to provide DBS service. See Press Release, Cablevision Sys. Corp., *Cablevision Systems Corporation and Lockheed Martin Achieve Mission Success with the Launch of Rainbow 1* (July 17, 2003), (footnoted continued...)

Further, the move by broadcasters to digital transmission could create thousands of new outlets for video programming to reach viewers. Every broadcaster has been “loaned” an additional six MHz of spectrum for use in digital broadcasting,<sup>112</sup> and each six MHz can be used for multiple “channels” of video programming with each such channel supporting one hundred sixty eight hours per week (24x7) of standard-definition video programming streams.<sup>113</sup> What this could mean is that, in a local TV market with five or six broadcast stations, should each broadcaster elect to multicast, this could make two to three dozen programming streams available free of charge to every home in signal range.

#### **I. Community Service.**

The extraordinary competition we face has forced us to do what we do best, to strive ever harder to offer our customers -- and potential customers -- the best value for the dollar in terms of quality, choice, and customer service. We believe that we offer consumers more value for the dollar than ever before, and more value in comparison to our competition. We will continue to expand and upgrade our services, while continuing to provide the programming networks that consumers value the most.

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available at [http://www.cablevision.com/index.jhtml?id=2003\\_07\\_17](http://www.cablevision.com/index.jhtml?id=2003_07_17). Cablevision expects to begin offering multichannel video programming service over its DBS satellite by the end of this year. See Kenneth Li, *Cablevision To Muscle into Satellite TV Arena*, Reuters.com, July 17, 2003.

<sup>112</sup> As of September 2, 2003, 1,003 broadcasting stations were already transmitting digital television signals. See <http://www.nab.org/newsroom/issues/digitaltv/>.

<sup>113</sup> See FCC Office of Eng'g & Tech, *Digital Television Consumer Information* (Nov. 1998), available at [http://www.fcc.gov/Bureaus/Engineering\\_Technology/Factsheets/dtv9811.html](http://www.fcc.gov/Bureaus/Engineering_Technology/Factsheets/dtv9811.html).

Importantly, we will also continue to dedicate our efforts to improve the communities we serve. Throughout our communities, we actively participate in civic activities, sponsor numerous events, and dedicate resources to improving the places we live, work, and do business.

In many of our service areas, for example, we produce local public affairs programming such as “Local Edition” and “Newsmakers.” These five-minute programs, shown every half hour on the channel carrying CNN Headline News, include interviews with local government officials, discussions of local and regional issues, and promotion of charitable endeavors. Earlier this year, Comcast worked with C-SPAN in organizing and funding the “Students & Leaders” program, which brought 40 national leaders to the classrooms of 40 high schools in the Washington, D.C. metropolitan area. Over a four-week period, numerous leaders from Congress, the Administration, federal courts, and federal agencies, as well as national print and TV journalists, “returned to the classroom” to discuss their lives and careers and the concepts of leadership and public service.<sup>114</sup> Through programs such as “Students & Leaders,” we are not only investing in but also serving our communities.<sup>115</sup> We realize that our local presence -- local jobs, local offices, local customer service, and our identity as a local business in each community -- is one of our distinguishing advantages, and that involvement in our communities not only helps ensure that our consumers know we are there if they need us, but also helps us better understand what consumers want and our customers need.

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<sup>114</sup> These discussions were aired on C-SPAN, C-SPAN2, and C-SPAN3, are available for video streaming on the Internet at <http://www.studentsandleaders.org/>, and are being prepared for distribution on VOD.

<sup>115</sup> See [http://www.comcast.com/inthecommunity/news/news\\_intro.html](http://www.comcast.com/inthecommunity/news/news_intro.html) to learn more about Comcast’s investment in local communities.

## V. CONCLUSION

The video marketplace today is intensely competitive. Almost every American consumer can select from no fewer than three facilities-based competitors for multichannel video programming services and a host of other communications services. Programming choices are abundant, and the sources of programming are plentiful and diverse. Bundling of services gives consumers the benefit of one-stop shopping and competitive pricing from multiple sources. Deregulation and competition have spurred investment and innovation, and all MVPD competitors are striving ever harder to meet consumers' needs.

We believe that the evidence of MVPD competition should lead the Commission to conclude that the aspirations of Congress and the Commission have been achieved. Competition is here and consumers now have multichannel video programming alternatives that are not just “adequate,”<sup>116</sup> but bountiful. The record of success of the nation's pro-competitive, deregulatory

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<sup>116</sup> See *First Annual Report*, 9 FCC Rcd. 7442 ¶ 6 (“the 1992 Cable Act’s regulatory scheme serves as a transitional mechanism until competition develops and consumers have *adequate* multichannel video programming alternatives”) (emphasis added; internal quotations omitted).

policy in the multichannel video marketplace strongly supports the notion that Congress and the Commission should stay the course.

Respectfully submitted,

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