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

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| In the Matter of | ) | |
| | ) | |
| Annual Assessment of the Status of | ) | MB Docket No. 04-227 |
| Competition in the Market for the | ) | |
| Delivery of Video Programming | ) | |

# NOTICE OF INQUIRY

**Adopted: June 10, 2004** **Released: June 17, 2004**

**Comment Date: July 23, 2004**
**Reply Comment Date: August 25, 2004**

By the Commission: Commissioners Copps and Adelstein issuing separate statements.

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## I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming.[1] This Notice of Inquiry ("*Notice*") solicits data and information on the status of competition in the market for the delivery of video programming for our eleventh annual report ("*2004*

[1] Communications Act of 1934, as amended ("Communications Act"), § 628(g), 47 U.S.C. § 548(g).

*Report*"). As in the past, we request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the market since the *2003 Report*, prospects for new entrants to that market, factors that have facilitated or impeded competition, and the effect of competition on industry groups and most importantly the effect on consumers.[2]

2. This Section 628(g) annual reporting requirement was imposed as part of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")[3] and provides a means for Congress and the Commission to monitor changes in the video marketplace. The 1992 Cable Act clearly indicated Congress' preference for competition rather than regulation.[4] Last year's *Report*, the tenth annual, presented an overview of changes, and described the significant developments that have occurred in the market for the delivery of video programming over the previous decade, especially the increased competition to incumbent cable operators. In the *2003 Report*, the Commission recognized that competition provides consumers with increased choice, better services, higher quality, and greater technological innovation. The *Report* found that, overall, due in part to Congressional efforts made over the past decade, technological advances and investment in new platforms for delivering video programming, the level of competition among video providers has increased. Most notably, a decade ago, cable operators served almost 100% of the nation's multichannel video programming distributor ("MVPD") subscribers; in 2003, cable operators served approximately 75% of all MVPD subscribers. Today, most consumers may choose between over-the-air broadcast television, a cable service, and at least two DBS providers. In addition, other delivery technologies (*e.g.*, broadband service providers and other overbuilders, private cable systems, wireless cable systems) continue to serve small numbers of subscribers in limited areas with competitive alternatives to cable systems. Nevertheless, while competitive alternatives to incumbent cable operators have been available to varying degrees between 1993 and 2003 and continue to develop, competition has not always developed as envisioned. For example, Congress and the Commission expected local exchange carrier ("LEC") video systems to become the primary competitors to cable systems, but significant LEC entry has failed to materialize. On the other hand, direct broadcast satellite ("DBS,") which did not begin offering service until 1993, has become the most significant national competitor to cable; by June 2003, DBS served approximately 21.6% of all MVPD subscribers.

3. In addition to increased choice for consumers, the *2003 Report* also found that more competition in the market for the delivery of video programming has catalyzed the development of cable television technology, allowing for better services and increased quality. Infrastructure upgrades made by cable operators over the past decade now allow them to transmit high-quality video signals to their customers, and offer such additional enhancements as high-definition television ("HDTV") and more channels of video programming than with their original architecture. Digital technology furthers the ability of cable operators to offer more service options, including advanced two-way services, such as high-speed Internet access, cable telephony, and video-on-demand. Overall, increased competition along with the development of advanced services now enable consumers to maintain more control over what, when, and how they receive information.

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[2] *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, 19 FCC Rcd 1606 (2004) ("*2003 Report*"). *See also Reports*, 1994-2002: 9 FCC Rcd 7442 (1994) ("*1994 Report*"); 11 FCC Rcd 2060 (1996) ("*1995 Report*"); 12 FCC Rcd 4358 (1997) ("*1996 Report*"); 13 FCC Rcd 1034 (1998) ("*1997 Report*"); 13 FCC Rcd 24284 (1998) ("*1998 Report*); 15 FCC Rcd 978 (2000) ("*1999 Report*"); 16 FCC Rcd 6005 (2001) ("*2000 Report*"); 17 FCC Rcd 1244 (2002) ("*2001 Report*"); 17 FCC Rcd 26901 (2002) ("*2002 Report*").

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[4] *See* 47 U.S.C § 521(b) nt; *see also* 47 U.S.C.§543(a)(2).

4. As competition has increased in the ten years since year-end 1993, so have cable rates. According to the Bureau of Labor Statistics, the cable television subcategory of the Consumer Price Index ("CPI") increased 53.1% between year-end 1993 and the end of June 2003, as compared with the 25.5% increased in the general CPI. Concurrently with these rate increases, however, the number of video and non-video services offered increased, including a substantial increase in the number of video channels and increased use of cable (as measured by a substantial increase in cable viewership). Cable operators assert that rising costs are attributable to increased programming costs, the costs associated with infrastructure investments and system upgrades, labor costs that have risen faster than inflation, as well as increased spending by cable operators on customer service.

5. For this year's report, we invite comments and information for the past year on video distributors in the market for the delivery of video programming, including those using both wireline and wireless technologies. Video programming distributors include cable systems, direct broadcast satellite ("DBS") providers, home satellite dish ("HSD") providers, broadband service providers ("BSPs"), private cable or satellite master antenna television ("PCO") systems, open video systems ("OVS"), multichannel multipoint distribution or wireless cable systems ("wireless cable"), local exchange carrier ("LEC") systems, utilities, and over-the-air broadcast television stations. Video programming is also distributed on videocassettes and DVDs through retail distribution outlets and over the Internet. We also request information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services. We further ask for comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets. Where possible and relevant, we request data as of June 30, 2004.

6. We stress that the accuracy and usefulness of the *Report* and its findings is directly related to quality of the data and information we receive from commenters that respond to this *Notice*. We emphasize the importance of the information provided by industry participants with the best knowledge of the questions and issues raised. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants. The Commission intends to be proactive in tracking down publicly available information, although we are concerned that such publicly available data are not adequate to gain a full understanding of the state of competition in the video marketplace, especially when various sources provide inconsistent data. Thus, it is extremely important for us to receive complete and accurate information directly from industry sources for our analysis of competition. If we continue to find that we do not get the necessary data from industry participants, we may pursue options for a mandatory data collection process to ensure that we have appropriate information to fulfill our statutory mandate to provide Congress with an annual assessment of the status of competition in the video marketplace.

## II. MATTERS ON WHICH COMMENT IS REQUESTED

### A. Competition in the Market for the Delivery of Video Programming

7. We seek a broad range of information and statistical data pertaining to video distribution technologies and the programming available to consumers. To elicit useful information for our assessment of the video marketplace, we raise a significant number of questions in this section. We ask commenters to address as many of these questions as possible. We reiterate the importance of receiving this information directly from industry participants for an accurate and complete report.

8. *General Statistical Data*: We seek the following information and statistical data for each type of video programming distributor: the number of homes passed by each wired technology; the number of homes capable of receiving service via wireless technology;[5] the number of subscribers and penetration rates to different levels of service for each service (*e.g.*, basic cable service, cable programming service tier or "CPST," premium, pay-per-view, video-on-demand).; channel capacities and the number, type, and identity of video programming channels offered, prices charged for various programming packages; cost of programming inputs; industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and financial resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market; and information on the ability of, and the competitive advantages to, video distributor expansion into new markets such as local telephony, and high-speed Internet access and the take rates for these services. In addition, we seek information regarding technical advances and the provision of enhanced video services such as video-on-demand ("VOD") and personal video recorders ("PVRs") by each video distributor as well as the take rates for such services. To the extent that these data are included in company financial statements or other corporate public documents, we seek to have parties file those reports in this proceeding.

9. *Head-to-Head Competition*: Most consumers can receive video programming from broadcast television stations over the air, one cable provider, at least two DBS providers, and, in limited cases, a wireline overbuilder or other delivery technology.[6] In particular, we are interested in data and information on the number of homes capable of choosing among MVPD services. How many households can receive service from one or more wireless providers (*e.g.*, DBS, wireless cable, PCO) as well as an incumbent cable provider? To what extent does line-of-sight affect the number of consumers who can receive these services. We are aware that the number of consumers with access to a wireline overbuilder (*e.g.*, an incumbent cable system, BSP, OVS provider) is relatively low. We seek comments and data on the number of wireline overbuilders available to consumers, such as the number of homes passed by more than one wireline MVPD, and why the availability is low relative to wireless alternatives.[7] As part of this request, we want to identify markets where wireline competition exists today, as well as data on where entry is likely in the near future. We also request information regarding areas where wireline competition once existed but failed. Furthermore, we seek information on the characteristics of a particular area that make it more likely to support head-to-head wireline competition and the characteristics of a region in which conditions are hostile to such wireline competition. We seek comment on the nature and extent of promotional discounts or other incentives offered to win or retain customers, the prevalence of bundled service offerings, and how these figures compare to markets in which the only competition is between cable and DBS. In addition, we seek data and comment on the number of households subscribing to more than one MVPD. We also request information on the number of customers switching from one technology to another and the factors responsible for switching among MVPDs as well as the percent of those customers that drop MVPD service altogether (*i.e.*, churn).

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

[6] *2003 Report*, 19 FCC Rcd 1681-82 ¶ 124.

[7] In February 2004, the General Accounting Office ("GAO") released a case study that showed rates for video services were 15% to 41% lower in five of the six markets with a BSP overbuilder when compared with similar markets lacking such competition. *See* U.S. General Accounting Office, *Wire-Based Competition Benefited Consumers in Selected Markets*, GAO-04-241 (Feb. 2004) ("*2004 GAO Report*") at 12-17. A 2003 GAO Report noted that the presence of wireline overbuilders generally leads to lower cable rates and improved quality and service from the incumbent cable operator. In areas where DBS operators provide local broadcast signals, cable operators have improved the quality of service, primarily by offering additional programming networks. *See* U.S. General Accounting Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Oct. 2003) ("*2003 GAO Report*") at 9-11.

10. In addition, we seek comments and information on the consequences for consumers of competition in the market for video programming. To what extent does competition continue to result in lower prices, more programming, better quality of service, or more advanced services, both video and non-video?[8] Does the effect of competition vary depending upon the nature of the competitors? What are the primary consequences of competition among wireline providers (*e.g.*, incumbent cable operator, BSP)? What are the primary consequences of competition among video programming distributors of differing technologies (*e.g.*, incumbent cable operator, DBS)? We also request comment on whether there are any statutes or regulations that should be modified in light of changes in the video industry and competition over the past decade.

11. Specifically, we seek data on relative prices in order to evaluate substitution between MVPD technologies (*i.e.*, what are the prices of similar cable, DBS, and BSP services). In addition, we are interested in investigating methods for measuring and comparing prices for products that vary in quality (*e.g.*, how to compare the price of a 50-channel package with the price of a 30 channel package). What is the average price-per-channel among the different MVPD technologies and what are the strengths and weaknesses of using that measurement for assessing competition by providers that do not sell those channels on a per-channel basis? We seek comment on the usefulness of other such methods as per-channel audience shares or aggregate audience share comparisons by technology; using industry measures of quality such as the number of industry or other awards received; or any other method for systematically examining quality-adjusted prices.[9]

12. *Multiple Dwelling Units*: We seek comment on any factors that are unique to competition in the multiple dwelling units ("MDUs").[10] How many, or what percentage of U.S. households are in MDUs? How common is it for consumers to have choices among video programming services within MDUs? We ask for comment on how access to buildings by providers, or lack of access, affects the number and types of competitive alternatives. Is the use of exclusive and so-called "perpetual" video service contracts in MDUs increasing or decreasing? What effects do the inside wiring,[11] over-the-air reception device ("OTARD"),[12] and cable bulk rate[13] rules have on MDU competition? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are video distributors providing advanced services, such as high-speed Internet access and telephony, to MDU customers?

13. *Barriers to Entry and the Impact of the Regulatory Environment*: We seek comment regarding the ability of multichannel video programming distributors to gain access to programming networks, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers. Are there barriers to entry into the market for the delivery of video programming? What effect do existing Commission regulations and other provisions of law specific to video competition have on the market? What regulatory changes, if any, have facilitated or hindered head-to-head competition in local markets between or among video programming distributors? Are there regulatory or statutory factors influencing the ability of providers to include new services along with more traditional television

[8] *Id.*

[9] In its comments to the *2003 Report*, the National Cable and Telecommunications Association ("NCTA") submitted a study of cable pricing by Dr. Steven S. Wildman. Dr. Wildman studied cable prices and chose a method for adjusting for quality changes. NCTA Comments to the *2003 Report*, Wildman Statement, *generally*. *2003 Report*, 19 FCC Rcd 1688 ¶ 138.

[10] MDUs may include rental apartments, as well as condominiums and co-operatives.

[11] *See* 47 C.F.R. § 76.802 *et seq.*

[12] 47 C.F.R. § 1.4000.

[13] 47 U.S.C. § 543(d).

programming? Does the elimination of the uniform rate requirement in the face of statutorily defined "effective competition" raise a barrier to market entry? Are there any remaining, or impending, statutory or regulatory barriers to new entrants in the video market? We seek comment on specific changes to regulations or statutes that would reduce barriers to competition. Although we are primarily concerned with the effect of regulation on competition, we also request comment on other barriers to entry and competition.

14. *Programming Services*: We seek information on existing, planned, and terminated or merged programming services to assess the changes in the amount and type of video programming available that have occurred in the past year. We request detailed information about programming networks including ownership, the type of programming services (*e.g.*, national, regional, local) and the genre of programming services (*e.g.*, sports, news, children's, general entertainment, and foreign language). Furthermore, we request information on the transmission format of each service (*i.e.*, analog, standard digital ("SD"), or high definition ("HD") format). Are some services offered in multiple formats?

15. In the past, we have reported on the ownership of non-broadcast networks that are vertically integrated with cable multiple system operators ("MSOs"). This year, we seek to identify the ownership status of non-broadcast programming networks generally. In particular, we seek to identify which programming networks are owned by or affiliated with other media entities, including cable operators, DBS or other MVPD operators, newspapers, broadcast networks, and broadcast stations. We seek information pertaining to the percentage owned by each of the different entities with an ownership interest in each programming network. We want to identify independent networks (*i.e.*, programming networks not owned by, or affiliated with larger media entities). What criteria should we use to classify networks as independent? We also request data on the number of subscribers to each programming network. In providing this information, we ask commenters to explain whether the number of subscribers reflects the total number of subscribers to the MVPDs that carry each network or the actual number of subscribers to the programming network. Furthermore, we seek information on the distribution of U.S.-based programming networks in other countries, including the number of subscribers reached and the proportion of each network's revenue that is derived from foreign distribution.

16. We intend to report on the number and percent of non-broadcast networks affiliated with cable operators, as we have in the past, as well as DBS providers and other media entities. In the *2003 Report,* we noted that there are at least two methods for counting networks that are part of multiplexed service offerings.[14] A multiplexed service offering is an offering that involves a number of branded and related services, generally involving some time shifting of some of the same programs, which are offered for a single price. We request comment regarding how we should count such networks. We have reported that, over the past several years, the percent of vertically integrated non-broadcast programming networks affiliated with cable operators has generally declined. Has this trend changed? What factors have contributed to this trend or changes in this trend? We also seek information on the nature of trends in the status of programming networks' vertical integration with cable operators and with other media interests.

17. We further request information on the ability of programming networks to sell their services.[15] Specifically, we seek comment on programmers access to MVPDs and their ability to gain carriage. We request comment regarding any difficulties programming networks encounter when launching a new service. Is carriage by one or more of the largest MVPDs necessary for the successful

[14] In reviewing program service offerings we have previously counted each unique programming service of a multiplexed package separately but have not counted separately services that are not unique, as in a multiplexed programming service that is merely time shifted. *See, e.g., 2003 Report*, 19 FCC Rcd 1691-92 n. 586.

[15] *See Time Warner Entertainment Co., L.P. v. FCC*, 249 F.3d 1126 (D.C. Cir. 2001); *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, 16 FCC Rcd 17312 (2001).

launch of a new programming network? To what extent do start-up programming networks find it necessary to forgo license fees or offer launch fees, equity stakes, or exclusivity carriage arrangements in order to secure MVPD carriage? We are aware of one network, Anime, that launched as a video-on-demand network to demonstrate demand for its service in order to gain carriage.[16] What has been the experience of other networks seeking video-on-demand carriage? What other models are being used by start-up networks to persuade MVPD operators to carry their programming in either analog or digital formats? Are there certain types of programming content that guarantee carriage, or guarantee limited carriage? To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on it being affiliated with one of the largest MVPD operators or being associated with the brand name of an existing programming service? Have new programming services encountered competitive issues with respect to the type of programming they provide? To what extent does existing channel capacity limit carriage of new programming services? Have such difficulties been eased by increases in MVPDs' channel capacities and the creation of digital tiers on cable? How much channel capacity is available on the analog tier, and how does this affect the economics of new programming services? Are there new programming services being developed solely for carriage on digital tiers, or are there still programming services being developed to be added to analog tiers? If new services are added to analog tiers, does this result in another service being moved to a digital tier? How often do cable or satellite operators carry programming networks that they would not otherwise carry, or carry such programming on a tier they would not otherwise choose, but for a retransmission consent tie-in requirement with an essential broadcast or non-broadcast station or network?[17]

18. *Program Packaging*: We seek information on how video programming distributors package and market their programming. To what extent do MVPDs offer or plan to offer service to consumers on an "a la carte" or "mini-tier" basis rather than traditional tiering of programming services?[18] To what extent are cable operators or other video programming providers seeking to establish special-interest tiers, such as sports tiers or family tiers?[19] Have programming networks been moved from premium to expanded basic, or vice versa, and subsequently moved from expanded basic to digital tiers and why? What are the economic, legal, or other factors that affect a video programming distributor's decisions on program packaging? Have digital tiers enabled providers to offer improved programming options for consumers? What are the factors and criteria that providers consider in allocating programming to digital tiers? We request comment on the advantages and disadvantages of offering programming in packages other than the traditional bundling of many networks. In particular, we seek information on the programming composition and pricing of a la carte or mini-tiers, as well as data to compare prices of a la carte or mini-tier programming choices with more traditional MVPD packages. We also request information on whether there has been any consumer interest or demand for a la carte programming options, such as options that do not include sexually explicit or violent programming.

19. *MVPD Access to Programming*: We also seek to assess the extent to which video programming distributors are and have been able to acquire or license non-vertically integrated programming. To what extent are non-cable MVPDs producing their own programming or securing exclusive rights to certain programming services? What are the costs of producing or securing such programming, and have wireline overbuilders encountered any difficulty in doing so? How does exclusive or unique programming differentiate one MVPD from other video programming providers? Is

[16] Allison Romano, *The Final Frontier: 6 Steps to Digital Cable Success*, BROADCASTING & CABLE, May 3, 2004, at 28.

[17] *2003 Report*, 19 FCC Rcd 1706 ¶ 175.

[18] *See Comment Requested on A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, DA 04-1454 (MB, May 25, 2004).

[19] *2003 Report*, 19 FCC Rcd 1706 ¶ 175.

there specific programming, national or regional/local, that is unavailable to either cable or non-cable operators and, if so, why? How has this changed over the past year? How many and what type of programming networks are delivered terrestrially? Are such networks available to competing MVPDs? How do these various factors affect an MVPD's ability to compete?

20. We seek comment on video programming distributor access to particular genres of programming. We request comment on whether there are certain "must-have" programming services,[20] or genres of services (*e.g.*, movie, sports, or news channels) without which competitive video service providers may find themselves unable to compete effectively. If so, which services or categories of services are involved and to what extent are there substitute services? We ask commenters to indicate whether such programming is available to competitive video programmers and, if possible, to indicate the reason such programming is, or has been previously, unavailable. Specifically, we seek information on the extent to which locally-originated programming (*e.g.*, regional sports or news networks) is available to all competitive video services in a market, and the extent to which it is not. Data on exclusive contracts for all types of programming that would allow an analysis of the trends and competitive effects of exclusive contracts for national, regional, and local programming would be particularly helpful. MVPDs that compete with incumbent cable operators, and small cable operators, describe difficulties they have had gaining access to programming, which they consider "must-have," such as regional sports and news networks, as they have in previous years. These commenters state that, without access to regional sports and news programming networks many of which are affiliated with incumbent cable operators, it is difficult to compete

21. Furthermore, we seek information on several specific types of programming. We request information on the extent to which locally-originated programming is delivered to consumers, by broadcasters and MVPDs, and the factors affecting production of and availability of locally-originated programming. Additionally, to what extent do video programming distributors provide children's programming, and local news and community affairs programming? We further request comment on the extent to which programming is offered in languages other than English, both at the national and local levels, on all video distribution platforms, and the extent to which such programming was produced originally in a language other than English. Are there any exclusivity arrangements that implicate the availability of such programming for other distributors?

22. We also seek comment regarding public, educational, and governmental ("PEG") access and leased access channels, including the number of channels currently being used by cable operators for each of these purposes and the types of programming offered on such channels. What percent of cable systems allocate channels for PEG access? Commenters also are asked to provide information regarding the programming provided by DBS operators in compliance with public interest programming obligations requiring DBS licensees to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature."[21] We ask each DBS operator to provide a list of programs it carries on these channels and to explain its selection process for choosing programming for the reserved channels. Once selected, are DBS providers reviewing the programming to ensure that it is commercial-free and educational or informational in content? In addition, we seek information on the use of commercial leased access channels, either on a part time or full time basis. Are these channels

[20] Some MVPDs indicate that there are certain programming services that they "must-have" to attract subscribers and be able to compete. Such services include, but are not limited to, regional sports and news networks, and local broadcast stations. *See, e.g., 2003 Report*, 19 FCC Rcd 1695 ¶ 149. *See also General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Consolidated Application For Authority to Transfer Control*, 19 FCC Rcd 473 (2004).

[21] *See Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998).

accomplishing their intended purpose of providing competition to the programming channels under the control of the cable operator?

23. *Access to Programming by Persons with Disabilities:* We further request information regarding the accessibility of closed captioning and video description to persons with disabilities. Under the Commission's rules, video programming distributors are currently required to provide at least 1,350 hours of captioned "new" programming on each channel during each calendar quarter.[22] In addition, a video programming distributor must include captioning in 30% of its "pre-rule" programming on each channel during each calendar quarter.[23] We seek information on video programming providers' and consumers' experiences with closed captioning.[24] Are providers complying with the existing rules? Are video distributors passing through the captions?[25] Are the procedures for applying for an exemption based on an undue burden sufficient?[26] Are the complaint procedures sufficient?[27] What is the experience with the accuracy of captioning? As the amount of captioned programming increases, are the costs to caption programming decreasing? What are the current costs of real-time captioning used for live programs and off-line captioning used for pre-recorded programs on a per hour or per program basis? Are there voice recognition or other technologies available that are likely to change the methods by which programming is captioned? What has been the experience with the equipment and technologies associated with the captioning of multiplexed and high definition digital programming distributed over the air, on cable, and through other distribution systems? Are receivers functioning properly to display the advanced digital (EIA-708B) captions?[28] In addition, we seek information on video programming providers' and consumers' experiences regarding the accessibility of emergency information through captioning or other visual means.[29] We also seek information on the level and quality of captioning for non-English language programming.

24. In August 2000, the Commission adopted rules requiring certain larger broadcasters and video programming distributors to include "video descriptions" with a small amount of their

[22] 47 C.F.R. § 79.1(b)(1) (phase-in schedule for programming "new" programming which is defined as programming first published or exhibited on or after January 1, 1998). Video programming first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission is defined as "new" as of July 1, 2002. 47 C.F.R. § 79.1(a)(6)(ii). *See Closed Captioning Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, 15 FCC Rcd 16788, 16808-09 ¶ 60 (2000) ("*Digital Captioning Order*"). As of January 1, 2006, 100% of all new, nonexempt video programming must be provided with captions. 47 C.F.R. § 79.1(b)(iv).

[23] 47 C.F.R. § 79.1(b)(2) (phase-in schedule for "pre-rule" programming which is defined as programming first published or exhibited before January 1, 1998).

[24] *See, e.g., Closed Captioning and Video Description, Implementation of Section 305 of the Telecommunications Act of* 1996, 13 FCC Rcd 3272, 3312-13, 3387 ¶¶ 86, 254-57 (1998) (we intend to monitor and review the implementation of the closed captioning rules).

[25] 47 C.F.R. § 79.1(c).

[26] 47 C.F.R. § 79.1(f).

[27] 47 C.F.R. § 79.1(g).

[28] EIA-708 refers to the Electronics Industry Alliance's standard to implement closed captioning services with digital television technology. The Commission adopted a minimum set of technical standards for closed caption decoder circuitry for digital television receivers in accordance with Section 9 of EIA-708. *See Digital Captioning Order*, 13 FCC Rcd 3272.

[29] 47 C.F.R. § 79.2.

programming to increase their accessibility to persons with visual disabilities.[30] On November 8, 2002, the U.S. Court of Appeals for the D.C. Circuit vacated the Commission's video description rules, finding that they exceeded the Commission's authority.[31] In light of this decision, video description currently is provided by programmers on a voluntary basis. We request information regarding the amount and types of video programming that include video description and whether MVPDs generally carry video descriptions inserted by programmers.

25. *Program Access Issues*: We request comment on the effectiveness of our program access,[32] program carriage,[33] and channel occupancy rules.[34] To what extent have video programming services that were once delivered to MVPDs by satellite migrated to terrestrial delivery? To what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? How do exclusive programming distribution arrangements between incumbent cable operators and non-vertically integrated programming networks affect other MVPDs (*e.g.*, overbuilders, DBS)? To what extent are competitors to cable television, and DBS carriers in particular, obtaining exclusive rights to programming? What are the underlying economics that permit them to do so? As new technologies, such as VOD or other alternative delivery technologies, develop are there issues relating to the coverage of the program access rules that need to be addressed? Systematic data or analyses that allow comprehensive examination of the effects of programming distribution arrangements will be most helpful to our inquiry.

26. *Advanced Services*: What advanced service offerings (*e.g.*, high-speed Internet access services, telephony, interactive television, electronic programming guides) and new ways of offering service (*e.g.*, personal video recorders, video-on-demand, streaming video) are being deployed by video programming distributors? We seek updated statistics on the availability of such services, the cost of such services, the marketing of such services, the number of homes to which each type of service is available, and the number of subscribers to these services. We seek information on whether these statistics are actual numbers or derived through sampling. What are the advantages or disadvantages of providing advanced services using each delivery technology?[35]

27. We specifically seek comment on the development and deployment of electronic programming guides ("EPGs"),[36] video-on-demand ("VOD"), and interactive television ("ITV") services. We request information on the number and types of EPGs that video programming distributors offer or

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[30] Video descriptions are aural descriptions of key visual elements in a television program, inserted into the natural pauses in the program's audio and distributed in the program's second audio channel. *See Implementation of Video Description of Video Programming*, 15 FCC Rcd 15230 (2000), on recon., 16 FCC Rcd 1251 (2001).

[31] *Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

[32] 47 C.F.R. §§ 76.1004, 76.1507.

[33] 47 C.F.R. § 76.1301(c).

[34] 47 C.F.R. § 76.504(a).

[35] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 17 FCC Rcd 2844 (2002) ("*Third 706 Report*"); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 19 FCC Rcd 5136 (2004) ("*Fourth 706 Notice of Inquiry*"). *See also Filing the Annual Report of Cable Systems, Commission to Mail FCC Form 325 for 2003*, Public Notice, 18 FCC Rcd 14494 (2003).

[36] An EPG is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings. *2002 Report*, 17 FCC Rcd 26967 ¶¶ 159-61.

plan to offer to their subscribers, and the technologies used to distribute EPGs. To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider? To what extent are EPGs that are affiliated with a video programming distributor available to competitors? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both? We also seek comment on the development and deployment of video-on-demand ("VOD"), near video-on-demand ("NVOD"), and subscription video-on-demand ("SVOD") services and the technologies used to provide them to consumers. What are the differences between the VOD, NVOD, and SVOD services offered by cable operators, DBS operators, and others? We seek information on the types of ITV services that are being offered by cable operators, DBS operators, and others. We seek information on the availability of the middleware which enables such ITV services. If middleware is provided to an MVPD through an affiliated company, to what extent do other MVPDs have timely access to the requisite middleware capabilities?

28. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has had and continues to have on the nature of competition in the video marketplace. We seek information regarding the development and evolution of business models designed to bring non-video services to consumers (*e.g.*, high-speed Internet access services, telephony). Are there economic, technical, or regulatory issues related to the offering of such ancillary services that should be addressed? To what extent will these new services be supported by advertising, subscription fees, or per-use fees? What effect, if any, have recent economic developments and stock market fluctuations had on the availability of investment capital for the expansion or upgrading of existing distribution systems and the development of new providers and offerings?

29. We request information on the extent to which MVPDs offer video and non-video services together and how such offerings affect competition. How are the combined services offered and priced? Do prices differ for combined versus separate services? Do rates for non-video services differ for those subscribing to video service and those who do not? How do pricing practices affect customer retention? For each entity providing services bundled with a video service, we seek information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities as is used to provide video. We also request information on whether firms are entering into marketing agreements whereby one entity provides multiple services to consumers in a "seamless" manner, although the products originate from several firms.

30. *Rural and Smaller Markets:* We further seek information and comment regarding issues specific to video programming distribution in rural and smaller markets. How do MVPD choices for consumers differ in these markets compared to larger, more urban markets? To the extent that cable systems have not upgraded to 750 MHz or greater capacity, are such systems more likely to be located in rural or smaller markets? What percent of systems in rural or smaller markets have channel capacity less than 750 MHz.? We request information on the programming offered in rural and smaller markets and any differences between these offerings and those available in larger markets. Are there differences in programming costs for MVPDs providing service in smaller and rural markets compared to MVPDs in other markets? We are particularly interested in information on the experiences of independent cable system operators (*i.e.*, cable systems not affiliated with the largest MSOs). We are aware that some smaller cable operators participate in the National Cable Television Cooperative ("NCTC"), which negotiates programming contracts on behalf of a group of smaller operators. How do the discounts available to NCTC members compare to the "volume discounts" available to the largest cable operators? In addition, we request information on the advanced services (*e.g.*, high-speed Internet access, telephony) in rural and smaller markets, including current availability and plans for adding these services. Finally, in

part, Satellite Home Viewer Improvement Act of 1999 ("SHVIA")[37] is intended ensure broadcast television service for satellite subscribers in areas unserved by local broadcast stations through a process of predictions, measurements, and waivers. How is the process, in fact, functioning and how does it impact competition in the video marketplace?

31. *Consumer Equipment*: We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. We request information on the number of households that currently have analog television sets and the number of those television sets that are connected to an external set-top box that allows for the provision of various MVPD services. We seek information on the number of these set-top boxes that only provide analog services, the number of those that provide digitally compressed tiers of service, and the number that provide digitally transmitted video signals in standard definition and high definition video format. Similarly, we request information on the number of households that have digital television sets and the number of those sets that are connected to set-top boxes for each type of service provided by such boxes.[38] How many of these MVPD set-top boxes also contain cable modems or IP telephony interfaces? To what extent do these various devices contain personal video recorder ("PVR") capabilities and how are these services priced? To what extent is customer premises equipment capable of providing video programming on an a la carte basis and is this service being offered by any video programming provider? Further, we seek information on the retail availability of navigation devices to consumers.[39] What are the obstacles to equipment manufacturers and others for obtaining approval to attach devices to MVPD systems? To what extent, if any, do subscriber agreements attempt to limit the uses that may be made of customer premises equipment? How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market?

### B. Cable Television Service

32. We seek to update and refine our *Report* on the performance of the cable television industry. We request data and comments on the current state of competition in this segment of the video programming distribution market and any changes that have occurred in the state of competition since the *2003 Report*. Furthermore, we ask commenters to address the following questions:

33. *System Upgrades and Channel Capacity*: We request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. Are these investments continuing at the same pace as in previous years? What characteristics affect whether upgrades are deployed? We request information on the deployment of various technical methods to increase capacity. How is bandwidth allocated among analog and digital tiers and what factors influence that decision? To what extent are cable operators using digital tiers to offer analog services,[40] and to what extent are digital tiers used to distribute DTV signals?

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

[38] We seek more specific information on digital televisions ("DTVs") and DTV tuners/decoders in subsequent sections of this *Notice*. *See* ¶¶ 59-69 *infra*.

[39] Under the Commission's navigation rules, video programming distributors (except DBS) were required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. *See Navigation Devices Order*, 13 FCC Rcd 14775. By July 1, 2006, MVPDs will no longer be allowed to offer conditional access and other functions in a single integrated device. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 18 FCC Rcd 20885 (2003) ("*Navigation Devices Second Report and Order and FNPRM*"). *See also* 47 C.F.R. § 76.1204 (a)(1).

[40] Cable operators use digital compression in order to transmit an increased number of analog services.

34. For individual MSOs, we request information on the number of systems upgraded, the channel capacity (as measured in terms of analog channel capacity) resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), the number of systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. Is increased channel capacity most often used for new programming, digital duplicates of existing analog services, digital hybrids modeled after an existing analog service with increased capabilities, digital derivatives or "multicasts" of established analog services, high-definition or multicast standard definition digital television from over-the-air broadcasters, or other services, including non-video services? To what extent is new capacity used for non-video services? We seek specifically the number of homes passed with systems having less than 36 activated channels, if any.

35. Further, we request information on cable operator plans to convert their systems to all-digital transmission.[41] What is the timeframe for this conversion, and what effect will it have on channel capacity and the economics of programming networks? What are the prospects for, and what are the obstacles to, the development of cable facilities that rely exclusively on digital transmission techniques for the distribution of video programming? We seek comment on the benefits to consumers of an all-digital system. How would the structure of service tiers change if a system becomes all-digital? How would services on an all-digital system be priced? Do cable operators anticipate losing any existing customers in areas that will be converted to all-digital transmission? Do cable operators anticipate gaining subscribers in areas that will be converted to all-digital transmission? What are the implications for customer premises equipment?

36. *Ownership Transactions*: We seek comment on the level of large-scale consolidation in the MVPD industry. We seek information on mergers and other cable system transactions during the past year, including the names of the buyer and seller, the date of the transaction, type of transaction (*i.e.*, sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. Have such transactions and consolidations been more likely to occur in certain types of markets, or between certain size systems? For comparison purposes, we also seek similar information for non-cable video programming distributors. Did any of these transactions not involve the transfer of Cable Television Relay Service ("CARS") licenses?

37. *Clustering*: We request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market. What evidence is there, in terms of the service received or the rates charged, that increased clustering improves the efficiency of local cable operations? How does clustering affect programmers' ability to reach consumers? To what extent does clustering facilitate the development of regional programming? To what extent does clustering impact the distribution and marketing of existing regional programming options? What effect does clustering have on the ability to sell and price advertising? As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise that affect competition? Does clustering make it harder for overbuilders to remain viable, particularly in relation to programming availability and economies of scale and scope?

38. *Program Packaging:* We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from the basic service tier ("BST") to cable programming service tier ("CPST") or from these tiers to digital or

[41] Charter Communications has launched the first "all-digital" transmission cable system in Long Beach, California. This system still provides analog video to subscribers but, because the signal is digitally compressed for transmission, the provider can now offer many more channels than it did when most or all of its video signals were transmitted in analog format. Matt Stump, *Getting Digi With It*, MULTICHANEL NEWS, Jan. 19, 2004.

premium tiers? To what extent do cable operators offer multiple CPSTs or digital tiers? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition.[42] We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services. We also seek information on how many cable subscribers subscribe only to basic tiers (*i.e.*, "lifeline" tiers)? We seek comment on relevant trends in pricing of basic tiers.

39. *Advanced Services and Multi-Service Packaging:* Commenters are asked to provide information specific to the advanced service offerings by cable operators. We seek information on cable operators that currently provide or plan to provide video-on-demand. What types of services are offered in this manner and how are they marketed? Does video-on-demand change the essential nature of video programming distribution? Does it matter whether the programming is intended for delivery to a television set or a home computer? What effect does video-on-demand have on a programmer's ability to launch a new service? Video-on-demand allows viewers to select video programming from a library of programming choices, and uses only a single video channel to provide the consumer with this array of programming options. What effect does this have on traditional notions of channel availability? Does VOD effectively expand channel capacity such that there are no limits to the amount of programming that may be available to a consumer at any single given point in time? To what extent are cable operators offering traditional circuit-switched telephone service and what is the status of the development and deployment of Internet Protocol ("IP") telephony? What is the status of the cable industry certification process for the production of interoperable cable modems? To what extent are consumers now purchasing cable modem equipment certified by Cable Television Laboratories, Inc. ("CableLabs") under its Certified Cable Modem Project, rather than renting it from cable operators?[43] How effective has the CableLabs process been? How are advanced services such as VOD, cable telephony, and ITV priced? Are there packages of services for which discounts are offered? May consumers purchase advanced services without purchasing video services? To what extent are customers purchasing the various packages that include one or more advanced services in conjunction with video service?

40. *Navigation Devices*: We also seek updated information regarding the development of specifications for interoperable set-top boxes (*i.e.*, set-top boxes that can be moved from one cable franchise area to another and function with any given cable provider's local system) in CableLabs' OpenCable process.[44] How effective has the CableLabs process been? What percentage of existing equipment is compatible with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface (also known as "CableCARD"), or PHI license or similar such licenses, that affect the deployment of navigation devices or their availability at retail stores? Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant.

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[42] *See 2003 GAO Report* and *2004 GAO Report*, n. 7 *supra*.

[43] CableLabs created the cable modem standard, DOCSIS (Data Over Cable Service Interface Specification) in an effort to ensure the interoperability and retail sale of cable modem technologies. *See 2003 Report*, 19 FCC Rcd 1708-9 ¶ 179.

[44] The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. ("CableLabs"), a research and development consortium of cable operators. The standard is made up of technical specifications intended to facilitate interoperability among digital navigation devices manufactured by multiple vendors. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998) ("*Navigation Devices Order*").

41. Last year, the Commission adopted technical, labeling and encoding rules to permit television sets to be built with "plug-and-play" functionality for one-way digital cable services.[45] We request information on how many products are currently available with plug-and-play functionality, or are soon to be available. We seek information on the availability of CableCARDs and how cable operators make this option known to the public. What is the progress of efforts by the cable and consumer electronics industries to develop two-way "plug-and-play" receivers?

42. *Regulatory Issues*: Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources.[46] To assess whether this benchmark has been met,[47] we must first determine the number of homes passed by cable (*i.e.*, homes to which cable is available). In the *2003* Report, we noted that the number of homes passed depends on the data source used, and the percentage of homes passed varies based on the universe used for the comparison, with reported estimates ranging from 79% to 96%.[48] We request comment and supporting data that would be useful for determining an accurate homes passed statistic, including the number of homes passed by systems with 36 or more activated channels. We further seek information regarding how many homes passed by systems with 36 or more channels actually subscribe to cable service. In addition, we seek information regarding any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met. Further, if it is determined that the criteria have been met, we seek comment on what, if any, additional rules the Commission should promulgate to promote diversity of information sources.

43. We request comment on the "tier buy-through" option mandated by Section 623(b)(8) of the Communications Act?[49] This provision, which permits subscribers to purchase programming offered on a per-channel or per-program charge without first subscribing to tiers, other than the basic service tier, became fully effective on October 5, 2002, ten years after adoption of the "1992 Cable Act".[50] What portion of subscribers is taking advantage of this option? What, if any, problems does it create? How do cable operators make this option known by the public?

44. Under Sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity.[51] Commercial broadcast television stations may elect carriage on cable systems pursuant to either must carry or retransmission consent.[52] If a television station elects must carry, the cable operator is required to carry the signal without compensation. Alternatively, when a station elects retransmission consent, the cable

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[45] *Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885.

[46] 47 U.S.C. § 532(g).

[47] Previously, we reported that the benchmark had not yet been met. *See 2003 Report*, 19 FCC Rcd 1621 ¶ 22.

[48] *Id.* at 1620-21 ¶ 21. *See also Application of EchoStar-Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations), Transferors, and EchoStar Communications Corporation (a Delaware Corporation), Transferee*, 17 FCC Rcd 20559, 20611-12 ¶ 123 (2002). These figures refer to cable systems with any number of channels. The number of systems with 36 or more activated channels would be somewhat less.

[49] 47 U.S.C. § 543(b)(8). *See also* 47 C.F.R. § 76.921.

[50] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[51] 47 U.S.C. §§ 614(b), 615(b); 47 C.F.R. § 76.56.

[52] 47 C.F.R. § 76.64(f).

operator and broadcaster negotiate the terms of carriage. Broadcast television stations carried pursuant to retransmission consent, as well as stations carried under the must carry provisions, count towards the required set aside channels.[53] We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals. We also request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions.

### C. Direct-to-Home Satellite Services

45. For direct-to-home ("DTH") satellite services (*i.e.*, DBS and large dish or HSD),[54] we request data on the geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). Are DTH subscribers, in general, and new DBS subscribers, in particular, more likely to reside in urban areas than rural areas, or vice versa? How have these demographics changed since DBS began operation? To what extent do DBS subscribers reside in areas not passed by cable systems? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? Are there identifiable differences between consumers who choose to subscribe to DBS or HSD rather than choose cable or another video programming distributor? What percentage of new DBS subscribers are former cable subscribers? What percentage are former HSD households? What evidence is there of price competition between DBS and cable, particularly in markets where DBS offers local broadcast signals?[55] We request information regarding the investments that DBS operators have made or plan to make to upgrade their plant and equipment to increase channel capacity or offer advanced services. We request information on current channel capacity and the deployment of various technical methods to increase capacity.

46. *Local-into-Local and the Satellite Home Viewer Improvement Act of 1999 ("SHVIA")*: We request information on the number of markets where local-into-local television service is, or will be offered in the near future, pursuant to SHVIA, including the number and affiliation of the stations carried.[56] What percentage of DBS subscribers are opting for local programming packages where available? In addition, we seek comment on whether DBS operators are offering, or plan to offer, receiving equipment that integrates an over-the-air antenna with a DBS system and the quality of picture that results. What is the cost to consumers of local-into-local broadcast channels? What percentage of DBS subscribers subscribe to cable in order to receive local broadcast signals? We also request

[53] 47 C.F.R. § 76.56; *see also* 47 C.F.R. § 76.55(c) (definition of a qualified local commercial television stations).

[54] DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 feet in diameter) to receive programming. DBS uses relatively small receiving dishes (18-24 inches in diameter). *See, e.g.*, *1995 Report*, 11 FCC Rcd at 2080-85 ¶¶ 49-53; *1998 Report*, 13 FCC Rcd 24323 ¶ 61.

[55] A 2003 GAO study found that in markets where DBS companies provide local broadcast stations, rates are only slightly lower, but cable operators are more likely to improve the quality of their service in response to DBS competition. *See 2003 GAO Report* at 3-4. *See also* U.S. General Accounting Office, *Telecommunications: The Effect of Competition From Satellite Providers on Cable Rates*, GAO/RCED-00-164 (July 2000). While the components of cable and satellite prices differ and direct comparisons cannot be made, it appears that the average price difference between cable and satellite television service has narrowed significantly over the past five years, with average monthly expenditures for satellite service falling below cable for the first time. A study by J.D. Power and Associates found that "average monthly expenditures for satellite television service is $48.93 – up 8% from 1998," but "cable spending has increased 41% in the same time period, moving from an average of $35.15 per month in 1998 to $49.62 per month in 2003." *See also 2003 Report*, 19 FCC Rcd 1610-11 n.9.

[56] SHVIA was enacted as Title I of the "Intellectual Property and Communications Omnibus Reform Act of 1999" ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered Sections of 17 and 47 U.S.C.), Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999). *See also 2000 Report*, 16 FCC Rcd 6039-40 ¶¶ 68-71.

information on the impact of local broadcast signal carriage on DBS subscribership and penetration as well as its effect on the video programming market generally.

47. *Programming, Equipment and Prices:* We request data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? Has this changed over the past few years? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. How do DBS leasing prices for equipment compare to those for cable equipment? To what extent, and through what specific market mechanisms, do satellite operators discount or subsidize equipment costs in order to attract subscribers? Do satellite operators recoup such costs through their programming rates?

48. We also ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages. Cablevision's DBS service, Voom, which initiated its commercial service on October 15, 2003, has distinguished itself by offering 39 high-definition channels.[57] To what extent are other DBS operators offering broadcast and non-broadcast programming in HDTV format? Are DBS operators able to access cable-operator-affiliated regional programming? To what extent do DBS operators sell local, regional, or national advertising, and, if so, what share of the market does DBS hold? Do DBS operators have the technical ability and copyrights to insert advertising locally or regionally into: (i) broadcast programming or (ii) non-broadcast programming? Have political candidates requested advertising time on DBS systems? Prior to News Corp.'s acquisition of Hughes Corporation, we were unaware of any DBS provider that also produced video programming. In addition to News Corp., do DBS operators offer any programming they produce themselves? Specifically, do DBS operators create their own regional programming?

49. In our *2003 Report*, we noted that the decline in HSD subscribership is caused principally by HSD subscribers switching to DBS because of the smaller, less expensive and easier to use equipment.[58] We also reported that some popular programming is no longer offered to HSD subscribers.[59] For example, in May 2003, the National Football League informed HSD subscribers that its NFL Sunday Ticket programming package would no longer be made available to them. We seek information about programming and program packages available for HSD subscribers. How many program packagers offer programming to HSD households? How are programming services packaged and what are the prices of the services offered? How much free and unscrambled programming remains for HSD users to access? Is programming offered to HSD subscribers on an a la carte basis? If so, we request information on the programming service offered in this manner and the price of such programming,

50. *Advanced Services:* We seek information on the status of current and future plans of both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the overall satellite industry, including fixed satellite systems ("FSS"), DTH and DBS providers. How many consumers subscribe to each type of service and how much do they cost? We seek comment on the extent to which DBS providers are offering packages in conjunction with other companies. For example, to what extent do DBS operators co-market advances services, such as DSL or voice services, with local exchange carriers ("LECs").

[57] Cablevision, *Cablevision's Rainbow DBS Introduces Voom – Nation's First Television Service Designed to Meet Demand of Growing Underserved HDTV Market* (press release), Oct. 15, 2003. The Voom service covers the easternmost part of the continental United States. *See also* Mavis Scanlon and Shirley Brady, *Cablevision Calls It Voom*, CABLE WORLD, Sept. 15, 2003, at http://www.cableworld.com/ar/cablevision_ calls_voom.

[58] *2003 Report,* 19 FCC Rcd 1655 ¶ 74.

[59] *Id.*

51. *Marketing of DBS Services*: We seek comment on DBS distribution arrangements, such as direct sales or leases to subscribers; sales through consumer retail outlets; sales through antenna installers; installations by third party subcontractors or by DBS operator employees; regional distributors; and any other form of marketing, distribution, installation, or service. We also request information on video distributors that market DBS service, including the delivery technology used and whether operators combine DBS programming with other services. What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?[60] To what extent are equipment such as receiving antennas and receivers and recording devices sold or leased separately from monthly or yearly service packages and to what extent are they only made available as a package sale or lease?

### D. Broadband Service Providers, Open Video System Operators, and Overbuilders

52. We request information regarding the provision of video, voice, and data services by broadband service providers ("BSPs"),[61] open video system ("OVS") operators, and overbuilders. Are video services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percent of, BSP, OVS, or overbuilder subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services?

53. We further seek comment on the current and potential effect of BSPs, OVS, or overbuilders on the status of video competition.[62] BSPs and OVS providers serve only 2% of MVPD subscribers nationwide, though they serve larger portions of specific local franchise areas.[63] We request comment on the reasons why this percentage is so low. We seek comment on the characteristics that exemplify BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, business model).[64] Have BSPs become more competitive in recent years? Are there still significant barriers to entry?

54. What are the technical and economic factors that determine whether overbuild systems are successful? GAO notes in a recent study that BSPs consider a variety of factors when determining which markets to enter, including size of the market, average household income, rate of Internet or computer proficiency or usage, proximity to key facilities or parent headquarters, receptivity of the local government, and access to rights-of-way or franchise requirements.[65] How do BSPs select which markets or areas to serve? Are there market characteristics that make certain areas more conducive to such competition than others? What market characteristics affect the penetration (*i.e.*, percent of homes passed that subscribe of BSPs) and which market characteristics yield low penetration? What are the demographics of the average BSP consumer? For those systems that have failed, why have they failed? Are there reasons why BSPs can compete in some areas and not in others?

55. What types of companies have traditionally been the most successful overbuilding incumbent cable systems? Are there factors that make one type of company more successful than another such as

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[60] *See 2002 Report*, 17 FCC Rcd 26938-9 ¶ 75 (private cable operators offering DBS service).

[61] Broadband service providers are facilities-based, hybrid providers of voice, video, and high-speed Internet access services. We note that "broadband service provider" is the term used by this class of new entrants to describe the range of services they offer; it is not intended to imply anything with respect to Commission policies that might involve broadband services. *2003 Report*, 19 FCC Rcd 1658 n. 338.

[62] *See* ns. 7,42 *supra*.

[63] *2003 Report*, 19 FCC Rcd 1718.

[64] *See 2004 GAO Report* and n. 7 *supra*.

[65] *2004 GAO Report* at 17-20.

ease with which they can overcome barriers to entry, access to capital, brand name recognition? How have municipal overbuilders in particular fared? Are municipal system rates subsidized, or can they profitably compete and provide service without support from tax or other municipal revenue sources?

56. To what extent are overbuilders operating under the open video system classification? To what extent are open video systems joint ventures between video service providers and other entities and what are the arrangements among the participants in such ventures? Are programmers that are not affiliated with the OVS provider seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis? What effect has the *City of Dallas, Texas v. FCC* decision had on the growth of OVS?[66] Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

### E. Broadcast Television Service

57. Broadcast television is a competitor in the video marketplace for programming content, audiences and advertising revenues as well as a supplier of programming content to MVPDs. We seek data and comment on the role of broadcast television in the market for the delivery of video programming. We also request information on broadcast network and station audience shares, especially relative to those of non-broadcast programming services. We request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? To what extent are cable television and DBS retransmission consent negotiations providing broadcasters with an additional revenue source, either through direct compensation or through indirect benefits such as, for example, contracts for the carriage of affiliated programming? If the compensation is not direct, how is it accounted for? What forms of compensation are broadcasters receiving for retransmission consent?

58. We previously reported on the repurposing of broadcast network programming on non-broadcast networks and vice versa.[67] We seek to update our information on this practice and ask commenters to provide examples of repurposing during the current television season. To what extent is the repurposing of programming between commonly-owned networks? To what extent is repurposed programming available on unaffiliated programming services? Are there factors that determine which network carries the repurposed programming? We also note that broadcast networks now show original programming more than once in the same week. We seek comment on this relatively new practice and the experience of broadcasters using this "time shifted" scheduling.

59. *Transition to Digital Television Broadcasting ("DTV")*: In previous *Reports*, we have addressed digital broadcast television service ("DTV"), and more specifically high definition television ("HDTV"), as part of our overview of each video delivery technology. This year, as the transition to DTV continues to move forward, we find it appropriate to focus particularly on the transition from analog to digital television service and the data sources and techniques for monitoring progress toward the completion of the transition. Thus, we seek comment and data on a broad range of issues relating to the DTV transition. While there are a number of on-going proceedings relating to the progress of the transition,[68] we seek to further examine here the ways in which broadcast television stations' deployment

[66] *City of Dallas, Texas v. FCC*, 165 F.3d 341 (5th Cir. 1999) (local governments may impose franchise requirements on OVS operators).

[67] *2003 Report*, 19 FCC Rcd 1669-70 ¶ 95.

[68] *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 18 FCC Rcd 1279 (2003). The DTV periodic reviews are intended to monitor the progress of the digital conversion and to make any adjustments necessary to our rules and policies to ensure facilitate the introduction of digital broadcast television service and the recovery and redeployment of spectrum at the end of the transition.

of digital television service and the DTV programming provided by MVPDs impact competition in the video programming distribution market. We invite comment on programming content that is available in DTV formats, over-the-air availability of DTV service, the carriage of DTV programming by MVPDs, including satellite systems as well as cable systems, equipment used to receive DTV programming, current and projected levels of consumer access to and use of DTV, and consumer education efforts. We request information on the development of DTV, including historical, current and projected data.

60. *Digital Broadcast Programming.* We request information regarding the amount and type of DTV programming (*e.g.*, network, local, syndicated) currently offered by broadcasters. To what extent are broadcasters using their DTV spectrum for standard definition digital television ("SDTV"), high definition television ("HDTV") and multicasting? How much programming is offered in each format, overall and in prime time? What has been the experience with broadcasting high definition and other programming at the same time? What data rate is used for HD programming in such circumstances? We seek this programming information for both broadcast networks and local stations (*i.e.*, network affiliated and independent stations). To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through and broadcast or for other reasons do not broadcast? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum, and are there differences between commercial and noncommercial broadcasters' offerings? What is the status of interactive broadcast services? We are aware of several efforts to combine DTV spectrum from a number of broadcasters in a market to offer a multichannel subscription programming service.[69] We seek updated information on the status of these efforts and other planned uses of DTV spectrum. To what extent are broadcasters using or planning to use DTV spectrum for other ancillary and supplementary services (*e.g.*, datacasting)?

61. *Availability of DTV Programming Service:* We seek information on the availability of over-the-air DTV service to viewers. What reception difficulties, if any, are experienced by viewers that are within the service areas of DTV stations? To what extent, will we continue to see advances in reception performance, and what are they? Are there unique reception issues that differentiate DTV service from analog service in terms of either better or worse over-the-air reception? To what extent is there actual over-the-air coverage? What are the signal strength requirements for adequate reception, both outdoors and indoors? What portion of the population has access to over-the-air DTV service? What is the difference in terms of population coverage between the allocated coverage area and the coverage area based on the actual facilities of DTV stations that are now operating? Are predicated service areas accurate as measures of actual service availability?

62. Currently, carriage of broadcast DTV signals by cable and satellite systems is voluntary.[70] How much broadcast DTV, either SDTV or HDTV formats, is being provided over cable and satellite systems? We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms. How many cable operators are carrying multicast DTV or would be willing to do so if and when broadcasters transmit multiple streams? In particular, we seek information on the carriage

[69] For example, U.S. Digital Television, Inc. uses local DTV spectrum to offer an over-the-air package of HDTV and nonbroadcast programming for a monthly service fee in Salt Lake City, Las Vegas, and Albuquerque. *See* U.S. Digital Television at http://www.usdtv.com/company_info.php. In addition, Emmis Communications has announced an initiative to develop over-the-air multichannel video programming service using DTV spectrum and is seeking participation by other broadcasters in this effort. Emmis Communications, *Television Broadcasters Initiative Unveiled* (press release), Apr. 20, 2004.

[70] *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598 (2001). In the First Report and Order and Further Notice of Proposed Rulemaking, we clarify that: "a digital-only television station may assert its right to carriage. Specifically, new television stations that transmit only digital signals, and current television stations that return their analog spectrum allocation and convert to digital operations, must be carried." *Id.* at 2599-600, 2605 ¶¶ 1, 12. *See also* 47 U.S.C. § 76.64(f)(4).

of multiple streams of noncommercial broadcast education stations' DTV signals. In addition to multicast, we seek comment on the extent to which digital signals are being converted to analog for viewing. To what extent do DBS and other MVPDs carry broadcast DTV programming? Do non-cable MVPDs carry multicast DTV or plan to carry multiple streams of broadcast DTV programming? We request comment on carriage agreements between MVPDs and broadcasters. To what extent has carriage been delayed as a consequence of broadcasters' seeking compensation for carriage rights? To the extent that broadcast HDTV is not being carried, why is it not being carried? We also seek comment on the packaging and pricing of broadcast DTV offered by MVPDs. DBS operators and some cable operators have expressed concern about their ability to carry digitally transmitted broadcast stations as the stations transition from analog to digital transmission and as they increasingly offer high-definition broadcasts of programming. What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not? How much non-broadcast HDTV programming is being carried by MVPDs? We also request information regarding plans to carry increasing amounts of DTV programming. In addition, we seek information on how MVPDs package and price broadcast and non-broadcast DTV programming? Do MVPDs offer separate packages for broadcast and non-broadcast DTV programming? Do cable subscribers need to purchase the "digital tier"[71] of service in order to receive any DTV content?

63. *Consumer Equipment and Consumer Electronics Issues:* We seek information regarding the equipment needed to receive DTV programming either over the air or from an MVPD. Consumers can receive DTV/HDTV programming either over-the-air or through an MVPD. To receive DTV/HDTV programming over the air, a consumer must have an antenna capable of picking up the broadcast signal and a digital television receiver that includes a DTV tuner or a separate set-top box containing a DTV tuner. The Commission has adopted rules to phase in DTV tuner requirements for new TV sets that would make over-the-air reception of broadcasters' DTV signals possible without the use of a separate box.[72]

64. We request information on the total number of digital television displays that have been shipped to retailers and how many have been sold to consumers. How many of these digital television sets, both shipped and sold, include over-the-air DTV tuners? How many separate set-top over-the-air DTV tuners have been shipped to retailers, and how many of these tuners have been sold to consumers? How many DBS receivers contain over-the-air DTV reception capabilities? How many tuner cards meeting the advanced television system committee ("ATSC") DTV standards for use in personal computers have been sold? We also seek projections on the number of households that are planning to buy a digital television set with a built-in digital tuner within the next year, in the next two years; in the next three years? How many of these television sets will have a screen size of 36 inches or larger; how many with a screen size 25-35 inches; and how many will have smaller screens?

65. MVPDs deliver DTV programming to their subscribers in much the same manner as they deliver analog signals, either through a cable wire or satellite dish antenna, however, a set-top box with a

[71] Digital tier does not refer to content viewed in digital format; rather it refers to the tier of programming that is digitally compressed for transmission purposes only in order to offer cable subscribers additional content options. The digital compression process starts with video in analog format, compresses the signal using digital technology, and then the signal is converted back into analog format for viewing. Digitally compressed video is always viewed in its original analog format, regardless of what type of television set the viewer uses to view the video.

[72] *See Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television,* 17 FCC Rcd 15978, 15995-96 ¶¶ 39-40 (2002). The phase-in plan initially requires 50% of all new DTV sets with screen sizes 36 inches and above to include DTV reception capability by July 1, 2004; 100% of DTV sets 13 inches and above must include DTV tuners by July 1, 2007.

digital tuner is generally needed to display the programming on a DTV receiver.[73] In addition, over-the-air or MVPD-provided digital programming can be converted into analog format either centrally by the service provider or at subscriber premises using a set-top box (digital to analog converter) so that digital programming can be viewed on an analog television receiver. Where MVPDs are carrying broadcast digital programming, we seek information on the nature of the investment in additional equipment that is required by the subscribers to view this programming in its digital format and the number of subscribers that have acquired the necessary equipment. We also request information on MVPDs' investments in equipment used to convert digital signals to analog either at a central facility or at the subscribers' premises. How many subscribers have set-top boxes capable of converting standard definition DTV signals to analog? How many have set-top boxes capable of processing and passing through HDTV signals? We also seek information as to the experience of all the parties involved in those situations where DTV signals have been down-converted to an analog format at a cable system head-end prior to distribution.[74]

66. We further seek information on the availability of MVPD set-top boxes with over-the-air DTV tuners. We request information on the number of cable and DBS set-top boxes designed for the provision of DTV that have been shipped to cable or DBS providers and how many subscribers use such set-top boxes. We also seek data on the number of cable and DBS set-top boxes designed to provide HDTV that have been shipped to cable or DBS providers and how many subscribers use such set-top boxes.

67. We request information on how consumers receive television programming, and how many of these households have the capability to receive DTV programming. Consumers who do not subscribe to an MVPD service rely on over-the-air transmission of broadcast television signals. Other households receive broadcast television programming over the air on those television receivers that they have chosen not to connect to an MVPD service. We request data on the number of households relying solely on over-the-air broadcast television for programming, as well as the number of MVPD households that rely on off-air reception for local broadcast service on one or more of their television sets not connected to an MVPD, by type of MVPD service. We ask commenters to provide demographic information that might assist us in classifying such households (*e.g.*, urban vs. rural, income, education levels, age).

68. We also specifically request information on the number of households that are able to receive DTV/HDTV programming either over the air or from an MVPD. How many households that rely on over-the-air reception are also DTV households? How many MVPD subscribers choose to receive broadcast DTV signals over the air? We seek current data and projections for the number of households that rely on over-the-air reception of broadcast television that have DTV sets, including the number that have built-in or separate DTV tuner capability. How many MVPD systems are carrying all local broadcast stations that are offering DTV programming? How many MVPD subscribers are served by

[73] In 2003, the Commission adopted standards to ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. *See Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885. We expect television sets with this so-called "plug and play" capability to be available later this year.

[74] Such down conversion is explicitly authorized under the cable television broadcast signals carriage rules with the consent of the station involved. *See Carriage of Digital Television Broadcast Signal*, 16 FCC Rcd 2598. At least in partial reliance on this decision, a number of television stations have obtained Commission authorization to cease operating their analog facilities and return those frequencies for alternative uses. *WWAC-TV, Atlantic City, New Jersey*, 17 FCC Rcd 19148 (2002); *WNVT-TV, Goldvein, Virginia*, 18 FCC Rcd 18517 (2003); *KVMD(TV), Twentynine Palms, California*, 18 FCC Rcd 9131 (2003). WHDT-TV-DT, Stuart, Florida, which operates as a digital facility but never had a paired analog station, also operates pursuant to the same cable television carriage rules. *Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, 16 FCC Rcd 2692 (2001).

systems that carry DTV programming, and how many are subscribing to such services? We also seek projections on how these subscriber numbers are expected to grow over the next several years.

69. *Consumer Awareness of the DTV Transition*: We request information regarding industry participants' efforts to educate consumers about the digital transition and to promote DTV. Are consumers familiar with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. How are consumers learning about DTV/HDTV? Do consumers rely on information from the government, consumer electronics retailers, news programming, broadcasters, other video program distributors and producers, or others? How are broadcasters and MVPDs advertising or promoting DTV/HDTV beyond the text indicating that a program is being simulcast in HDTV? To what extent is broadcast advertising time being used to promote DTV/HDTV? How much advertising of DTV/HDTV is there on cable or other MVPDs? Do newspaper or other television guide listings indicate when programming is available in HDTV format? What type of education effort is going on in the retail stores at the point of sale? To what extent do retailers train their employees who engage in DTV sales? Do consumer electronic manufacturers provide consumer information to the retailer to assist in educating the buying public in digital products and services and how informative are any materials provided by manufacturers?

### F. Wireless Cable Systems

70. We seek information regarding the previously identified trend towards declining availability of and subscribership to MMDS-provided video, also known as wireless cable.[75] What factors have affected the health and viability of the wireless cable industry? We seek information about the availability of advanced services, including two-way services, such as digital video, high-speed Internet access services, and telephony. Where are consumers able to access any or all of these services via MMDS, and how does the availability of these services affect competition in the areas in which they are available?

### G. Private Cable Operators

71. We request information on the types of services offered by private cable operators, also known as SMATV operators, and the price charged for those services. How do the programming packages offered and the price of private cable service compare to those of incumbent cable operators? Are there services that private cable operators provide their subscribers that cable, DBS, and other technologies do not? What factors affect the health and viability of the private cable industry? What is the extent of alliances between DBS service providers and private cable operators in offering service to multiple dwelling units ("MDUs") via a central satellite antenna? Have the number of these alliances increased or decreased over the past 12 months? Are there competitive or legal hurdles that prevent private cable operators from working with DBS operators in MDUs? Are there competitive or other impediments that are preventing such alliances?

### H. Local Exchange Carriers and Utilities

72. We seek information regarding LECs and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. We also request information on DSL-based video efforts by LECs.[76] To what extent are these LEC cable systems competing as overbuilders of incumbent cable systems' service areas? To what extent are video programming services being bundled with telephone, high-speed Internet

[75] *2003 Report*, 19 FCC Rcd 1663-64 ¶ 86.

[76] In past reports, we have noted that some LECs are offering or are planning to offer video over VDSL. *2003 Report*, 19 FCC Rcd 1679 ¶ 117. This has more recently become known as "DSL-based video."

access, or other utility services? How does the ability to offer bundled services affect the relative competitive position of these entities? Are the prices charged by LECs and utilities similar to cable's pricing of such services? If not, how do they differ? Although past reports indicate that major LECs have largely withdrawn from the multichannel video program delivery business, it appears that they continue to invest in extending their fiber-optic networks to the consumers' premises. As the major telephone companies build out their fiber-optic networks to the home, to what extent will they be in a position to offer either DSL or other video services directly to residential subscribers?

### I. Home Video Sales and Rentals

73. We seek information regarding the home video sales and rental market,[77] such as data on the number or percentage of households with videocassette recorders, laser disc players, DVD players, and PVRs. We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs. We seek updated information on the development of the Internet as a venue through which some video retailers are selling or renting videos. Further, we seek updated information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

### J. Internet Video

74. In previous *Reports*, we have reported on video provided over the Internet.[78] As we have noted, video provided over the Internet has largely been of less-than-broadcast quality, and has generally been used to augment or time-shift video provided originally via other distribution technologies. As video compression technology improves, data transfer rates increase, and media adapters that link TV to a broadband connection become more widely used, it is believed that video over the Internet will proliferate and improve in quality.[79]

75. We seek information on the types of video services currently being offered over the Internet both in real-time and downloadable format. We also seek projections of whether and, if so, when Internet video will become a viable competitor in the market for the delivery of video programming. What criteria should determine whether Internet video is to be considered "broadcast quality" (*e.g.*, frames-per-second delivered, the size of the viewing area, the relative ease of use by the consumer, consumer habit, the type of programming offered, relative availability of programming)? How does currently available real-time Internet video compare to traditional MVPD and broadcast programming? To what extent are broadcast and non-broadcast programmers offering video programming over the Internet that timeshifts or supplements the video programming they offer over broadcast television or programming offered via MVPDs?[80] How many frames-per-second is experienced by most streaming video viewers? With current residential broadband Internet access bandwidth and compression techniques, what is the typical download time for a broadcast quality feature film length program? Is this likely to improve in the near-term, and what are the technological or economic factors lending to any such improvements? We also

[77] Home video sales and rentals have been considered part of the competitive video marketplace because they offer services similar to premium and pay-per-view programming services.

[78] *See, e.g., 2003 Report*, 19 FCC Rcd 1673-75 ¶ 104-7

[79] *See, e.g.*, Glen Campbell, Jim Moynihan, Jessica Reif Cohen, Keith Fawcett, Chris Li, Hyun-Ju Kwak, Jennifer Leonard, *Everything over IP*, Merrill Lynch, Mar. 12, 2004 (suggesting video-over-IP will be "the next VoIP").

[80] For example, in the *2003 Report*, we observed that ABC Network's ABCNews.com, had added a subscription-only Internet broadcast news network called "PoliticsLIVE" to its online video service. *See 2003 Report*. 19 FCC Rcd 1674-75 ¶ 106.

solicit information on the technological, legal, regulatory, and competitive factors that may promote or impede the provision of video over the Internet.

### K. Foreign Markets

76. Finally, we seek information regarding the status of competition in foreign markets for the delivery of video programming that would provide insights regarding the nature of competition in the U.S. market. We note, for example, that there are significant differences between the United States and other countries in the relative success of cable as compared to direct-to-home satellite service. We also note the relative success of DSL-based video in some European and Asian countries as compared with the United States. In terms of interactive video services, some foreign markets lag behind U.S. domestic markets and some outpace U.S. domestic markets. In addition, some countries have significantly higher rates of acceptance of high-speed Internet access service than in the United States as a percentage of their total population. We seek information regarding any differences between the U.S. and other markets with respect to video programming distribution and advanced services provision that would be instructive as to the efficiency of market structures and regulations within the United States. We request information in the form of data analysis as well as case studies.

77. We request information about the provision of video services in foreign markets that might provide insight into how we can promote a more competitive market in the United States. We seek information on broadcast and MVPD video services in various countries, including the structure of noncommercial broadcasting operations. What type of broadcast and non-broadcast programming networks are available for carriage by MVPDs in foreign markets? What is the average channel capacity of MVPD service in various foreign markets? How is the service packaged and priced to consumers? For example, we note that several of the largest cable systems in Canada voluntarily offer customers several subscription options for digital programming, including a tier of many programming networks, various smaller bundles of programming, and "a la carte" channel options.[81] In India, legislation was enacted that requires cable operators to offer programming, other than "free to air" programming, on a channel by channel basis, if the government finds it in the public interest to do so.[82] How do regulations, or lack thereof, in foreign markets compare with regulations in the United States? How might these differences yield different competitive results?

78. In last year's *Report,* we noted that the transition to DTV had recently been successfully completed in the Berlin-Brandenburg television market in Germany. We have identified several reasons for the success of the German conversion.[83] Although there are significant technical, economic, and regulatory differences between the German transition and the transition ongoing in the United States, we

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[81] *See, e.g.,* Rogers Communications Inc., at http://www.shoprogers.com/store/cable/digitaltvcontent/digitaltv_programming_Specialty.asp; Cogeco Cable Inc., at http://www.cogeco.ca/en/alacarte_services_o.html; Shaw Cablesystems, G.P., at http://www.shaw.ca/Tmplt.asp?PageID=593. There does not appear to be any Canadian Radio-television and Telecommunications Commission ("CRTC") mandate involved. *See* CRTC Frequently Asked Questions, at http://www.crtc.gc.ca/eng/faqs.htm: "By offering the programming services in packages, cable companies are able to ensure a wider audience base for each service and reduce individual fees. If cable customers were to select and receive only the channels they wanted, they might have to pay as much, or more, for one channel as they now pay for an entire package of programming."

[82] *See The Cable Television Networks Regulation Amendment Act, 2002,* at http://mib.nic.in/information&b/media/act&rules/2002.htm. The government implements this conditional access system ("CAS") by an official notification, which specifies the State, city, town or other areas and the effective date when all affected cable operators must begin offering service in this manner. *See also* Telecom Regulatory Authority of India, *Consultation Paper on Issues Relating to Broadcasting and Distribution of TV* Channels, Consultation Paper No. 9/204, Apr. 20, 2004.

[83] *2003 Report,* 19 FCC Rcd 1715-16 ¶¶ 194-96.

seek comment on lessons that may be learned from the German experience with the DTV transition. A similar transition is in progress in a number of other countries. For example, in the United Kingdom, probably the global leader in digital television adoption, more than 50% of households access digital cable, digital satellite, or digital terrestrial broadcast services. Government policy there is that the transition will take place and analog broadcast service terminated when everyone that receives the main public service channels in analog can receive these channels on a digital system and when switching to digital is an affordable option for the vast majority of the population, with a target indication of affordability that 95% of consumers have access to digital equipment.[84] How does the ongoing transition in the United States compare with the transitions in these foreign markets? How can we benefit from their experiences? How will the transition to DTV worldwide affect the transition in the United States? We also recognize that digital broadcast programming can be reproduced and redistributed without degradation and that the Internet facilitates the indiscriminate mass redistribution of such programming. We request information regarding other countries' efforts involving digital rights and copy protection regulations for broadcast digital programming which would have implications for the protection of our domestic content.[85]

79. We also are interested in the relative success of telephone company provided, DSL-based video[86] in Canada, Europe, and Asia (notably, Hong Kong). Nearly all LECs in Canada have some form of video offering today including DSL-based video service. All of these deployments were launched in advance of cable telephony deployments in their markets. Why have Canadian and Hong Kong LECs been more aggressive in deploying video services than LECs in the United States and why have they remained in the market, whereas LECs in the United States have largely exited? How do business strategies of Canadian and Hong Kong LECs and LECs in the United States differ? DSL-based video is also being pursued aggressively in Europe and Asia. What aspects of the European and Asian business model make DSL-based video more successful than in the United States? Does broadband deployment have any effect on the relative success of DSL-based video outside the United States or is the success due in large part to the relative stability and relative structure of the companies deploying such services?

80. Finally, we request information on the relative success of high-speed Internet access and other advanced services in foreign markets.[87] A 2003 OECD Report notes that telephony services provided by cable networks is particularly successful in the United Kingdom, Spain and Belgium.[88] At year end 2003, Canadian residential high-speed Internet access penetration[89] was an estimated 36%, whereas aggregate high-speed Internet access (*i.e.*, cable modem and DSL) penetration was 21% of U.S. homes. In other countries, such as South Korea, penetration is as much as 70% of the total population. In addition, whereas most U.S. broadband is at a speed of one megabit per second, consumers in countries,

[84] *See, e.g.*, http://www.ofcom.org.uk/research/dso_report/sectional?a+87101#snap; http://www.freeview.co.uk; http://www.culture.gov.uk/broadcasting/digital_television.htm.

[85] For example, Japan has already taken steps to protect digital rights. *See* International Telecommunication Union, Radiocommunications Study Groups, *Copy Control Scheme for Digital Broadcasting in Japan*, Document 6M/42-E.

[86] DSL-based video delivers a single video stream to each TV from the head-end. The set-top box requests the channel from the head-end and the channel is then streamed to the set-top. *Everything Over IP* at 31.

[87] The Organisation for Economic Co-operation and Development ("OECD") has released a paper entitled "Broadband and Telephony Services Over Cable Television Networks," which provides a summary of the efforts being made in various countries for the provision of high-speed data and telephony over cable infrastructure, as well as consumer acceptance rates of such services. OECD, *Broadband and Telephony Services Over Cable Television Networks*, Nov. 7, 2003, at http://www.oecd.org/dataoecd/24/59/18807949.pdf.

[88] *Id.* at 8-9.

[89] Penetration in this case represents the number of high-speed Internet access subscribers as a percent of the total population.

such as South Korea, can purchase service with speeds of up to eight megabits per second. To what extent, are Internet video and other advanced services available in Canada, Hong Kong, South Korea, and other foreign markets? What factors influence the availability of such services? Are high-speed Internet access and other advanced services subsidized by local or national governments? What are the regulations governing high-speed Internet access and other advanced services in various foreign markets?

## III. PROCEDURAL MATTERS

81. *Authority.* This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403, and 548(g).

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

83. *Comment Information.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before July 23, 2004, and reply comments on or before August 25, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

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

85. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

86. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

The filing hours at this location are 8:00 a.m. to 7:00 p.m.

-All hand deliveries must be held together with rubber bands or fasteners.

-Any envelopes must be disposed of before entering the building.

-Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

-U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

-All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

87. Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 488-5300 or (800) 378-3160, e-mail fcc@bcpiweb.com, or via its website at http://www.bcpiweb.com. In addition, parties should serve one copy of each filing via email or one paper copy to Anne Levine, Media Bureau, 445 12th Street, S.W., 2-C410, Washington, D.C., 20554. Parties should serve one copy of each filing via email or five paper copies to Linda Senecal, 445 12th Street, S.W., 2-C438, Washington, D.C., 20554.

88. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or bcline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 488-5300 or (800) 378-3160, e-mail fcc@bcpiweb.com, or via its website http://www.bcpiweb.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

89. The Media Bureau contact for this proceeding is Anne Levine at (202) 418-7027, or Anne.Levine @fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

**STATEMENT OF**
**COMMISSIONER MICHAEL J. COPPS**

*Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*

The Report we initiate today, required by Congress, serves as the factual foundation for Commission decisions and provides the Legislative branch with information to inform the national policy debate. It is therefore extremely important that the Commission has the best possible data available to it when drafting this Report.

I expressed concerns last year that our Report suffered from both limited data and inadequate analysis. At a time of significant increases in cable rates year after year, I felt that Congress and American consumers deserved a better effort. Cable rates have soared by more than 50 percent since passage of the 1996 Act, with substantially higher increases for customers in some areas.

Today, the Commission commits to undertake a more pro-active and comprehensive information-gathering effort for this year's Report. In addition, the Commission indicates that, if necessary to carry out its statutory duties, it will consider an NPRM to obtain better data. Our analysis can be only as good as the data going into it. So we first need fuller data, both from within and from our stakeholders. Absent detailed comments from a wide range of sources, the Report will again fall short of its potential. So I'm asking here for more and better input from outside the Commission and then an intensified effort from within. Down that road we fulfill our mission to be the government's expert agency.

Thanks to the Bureau for working to enhance this item.

## SEPARATE STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

*Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*

I support this Notice, which seeks to gather information for the Commission to use in compiling our 11th annual report to Congress on the status of competition in the delivery of video programming. Video programming delivery involves an intricate web of relationships, yet Congress clearly recognized the power of competition to give consumers more choices, lower prices, better services, and diverse sources. Congress also foresaw the need for the Commission to monitor such competition vigilantly.

Today's Notice is a comprehensive and appropriate way to start. It contains meaningful questions which, if answered fully and accurately, would be useful for the Commission in fulfilling our statutory duty. I'm particularly pleased that we have a section that focuses on pertinent issues facing rural and smaller markets. It's also appropriate that the Commission branch out and report on the vertical integration between programmers and all major media companies.

Given the technological transformations upon us, it is more important than ever that the Commission gather the necessary information on which we and the Congress can make appropriate policy determinations. Many in Congress have been asking for a deeper understanding of the factors that underlie cable pricing and competition, and the consequences for consumers.

I have expressed concern with the analytical depth of some of the information that the Commission has presented in the past. The Commission today commits to be more proactive in using outside sources and, if need be, undertaking a rulemaking proceeding to gather complete and meaningful data on which to base our analyses. We should strive to make sure that we are doing all that an expert agency can to adequately grasp and relay to Congress the dynamic aspects of the video programming delivery market.